

1894-020 Chancery Causes: James P. Barron & vs. John Gilly &
Lee Co. John Gilly & vs. James P. Barron &

Bailey, Collier, Orr, Hyatt

CA-Contract Dispute
T-Property

-Deed

1. Virginia: Lee County, to-wit:

At 2nd October Rules, 1893.

To the Hon. H. S. K. Morrison, Judge of the Circuit Court:

Humbly complaining, sheweth unto your Honor your orators and oratrix, James P. Barrow, P. H. Barrow, Infant &c, who sue by his brother and next friend James P. Barrow, Robert P. Barrow, and Lallie A. Barley, vs Lallie A. Barrow of Big Stone Gap, Wise County, Virginia — That Wm N. G. Barrow, Jr., was a citizen of Lee County, State of Virginia in the year 1874; that it has been more than seven years since 1874, in which year Wm N. G. Barrow, Jr., left the State of Virginia; that he has never at any time returned to the State of Virginia since he left it a fugitive from justice; that he has had no communication with his family since he so left the State; that by the Presumption of Law the said Wm N. G. Barrow, Jr. is dead.

The said Wm N. G. Barrow, Jr. was the father of your orators and oratrix, and died seized in fee simple of divers freehold estates and being so seized, departed this life intestate not later than April, 1875, but the date of death

2.) is not certainly known to any one, leaving
your orators and oratrix his heirs at Law.

The lands lie in Turkey Cove, Lee County, Va,
joining the farms of J. K. P. Barrow and others,
all in one body but in several parcels, con-
taining about 146 acres, and of the value
of \$4500⁰⁰ on the 27th day of January, 1876.

Your orators and oratrix further charge that
acres of said land is in the possession of
John Gilly, and that acres of it is in the possession
of James H. Collier; that John Gilly and James H. Collier
claim title to these freehold estates under and by
virtue of a bogus, fraudulent, and illegal
paper, and papers, commonly called a Deed, and
a Power of Attorney. The Deed purports to have
been executed to the said John Gilly and James H.
Collier by J. K. P. Barrow, Attorney in fact for
Wm H. G. Barrow, Jr., which deed bears date on the
27th day of January, 1876, and shows on
its face the inadequate price of \$7500⁰⁰,
less than \$11⁰⁰ per acre, ^{worth \$30⁰⁰ per acre} at that time, which deed is
here filed marked "A." But the said deed is null and
void for the reason that the Power of Attorney under which
J. K. P. Barrow acted is bogus, null, and void — a copy

3) of which is here filed marked "B." It shows upon its face that it is illegal, and that it is improperly upon record in the Clerk's Office of Lu County, Va., that it is not under seal; that it was never acknowledged, nor executed by Wm N. A. Barron, Jr., that the Certificate of acknowledgement does not certify the date of the Power of Attorney, and does not certify that it was acknowledged in the State where the Certifying Officer acted; that it does not certify that said paper was signed, nor that it was executed and acknowledged, or either, in the County where the Certifying Officer acted - all of which the Statute of Virginia then required.

It is a significant fact - and a strong badge of fraud that the deed from J. N. P. Barron, Atty - in fact to John Gilly and James H. Collins was promptly recorded on the 1st day of December, 1876, but that his Bogus Authority under which he pretended to act - never turned up until

4
Your orators and oratrix charge that their mother
the widow of Wm N. G. Barron, Jr., sold her down
in said land to John Gilly and J. H. Collier
and made a deed to them a copy of which is
now filed marked "C"

August 15th 1892, after it was well
settled that Wm N. G. Barron, Jr., was
dead, and after it was thought that
time would deal charitably with
its defects, and forgetfulness cover
up its wrongs to widow and or-
phans.

Your orators and oratrix charge that their
father never knew that his wife and chil-
dren had been dispossessed of this land
and was consequently not guilty of Laches;
that he could take no notice of the deed of
conveyance dated Jan'y 27th 1876, not
being able to have any communication with
this country.

The prayer of your orators and oratrix
is that John Gilly and James H. Collier be
made parties defendant to this bill and
that they answer the same but not
upon oath; that the deed of
January 27th 1876 from J. N. G.
Barron, atty-in-fact to John Gilly
and James H. Collier be declared
null and void; that docket be

5- assigned in said land to the said
John Gilly and James H. Collier; That
said John Gilly and James H. Collier
be required to account for the
rents and profits since January 2nd
1876 and that a Commissioner be
appointed to ascertain the same;
That general relief be granted.
May the Commonwealths writ of Habeas
corpus issue directed &c

Wm. G. Orr Solr.
M. G. Ely }

Plffs Costs
C 5.75
S 1.00
atty 15.00
Grd 5.00
JP 1.50
\$28.25-

James P. Barron et al
vs } Orig - Bill

John Gilley et al
Exhibits "A" "B" "C" filed.

1893 2nd Octo, Rules Bill filed
Spa Etd. & D. nisi

" 1st Nov. Rules taken
last Monday in Octo.
D. W. Cuff & Cause set
for hearing by Jiff

1894 March Term Contd
" June Term Contd

" November Term Decree
final See Order Book
Page 82

" June Term Contd

" November Term Decree
final Order Book
Page 82

Wm A. Orr } Sals.
M. A. Ely }

James P. Barron et al,)
) Joint and separate demurrer, plea ^{answer}
vs.)
) and Cross Bill of John Gilly, and
John Gilly et al.) James H. Collier.

The joint and separate demurrer, plea, answer and cross bill of John Gilly and James H. Collier to a bill in equity exhibited against them in the Circuit Court for Lee County by James P. Barron, P. H. Barron, an infant who sues by his next friend, James P. Barron, R. P. Barron and Sallie A. Bailey, formerly Sallie A. Barron.

For demurrer respondents say that said bill is not sufficient in law, whereof they pray judgment.

For plea respondents ~~by~~ by their attorney come and say that the supposed cause of action of the complainants, if any they have, did not accrue to the said complainants at any time within ten years before the commencement of this suit, and, therefore, they ought not to have or maintain this suit.

For answer and cross bill respondents state and charge as follows: At the second October rules, 1893, held for the Circuit Court of Lee County, Virginia, the aforesaid complainants exhibited against respondents their certain bill in equity in which they alleged that the said complainants are the heirs at law of William N. G. Barron, Jr., deceased; that the said Barron died seized of certain parcels of land, of part of which respondents are in possession, and claiming as the owners thereof. They allege that the said respondents claim under a certain deed, dated January 27th, 1876, from J. K. P. Barron, attorney in fact of the aforesaid William N. G. Barron, Jr., deceased, to respondents under and

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by virtue of the certain power of attorney, dated February 12th 1875, which deed and which power of attorney are alleged to be void and fraudulent, and they pray that the said deed be declared null and void; that the said respondents be required to account for rents and profits since January, 1876, and for general relief.

Answering, respondents admit that complainants are the heirs at law of the aforesaid William N. G. Barron, Jr., and that their said ancestor is now dead, but they state and charge that he did not die until a considerable time after the execution of the deed to them by J. K. P. Barron, attorney in fact. Respondents also admit that they are in possession of and claim to own by reason of the above mentioned papers, and of other acts done thereunder, the lands mentioned and described in the deed to them from J. K. P. Barron, a copy of which is filed with complainants bill. Respondents, however, deny that William N. G. Barron, Jr. died seized of all or any part of the lands in the possession of respondents; they further deny that the power of attorney above mentioned, or that the deed executed to them in pursuance thereof, are either bogus, fraudulent, illegal or void; they further deny that the lands purchased by them was at the time of their purchase worth \$30.00 per acre, or that it was worth anything like that sum; they further deny that the said power of attorney is improperly recorded in the Clerks Office of Lee County, Virginia; that it was never acknowledged or executed; and they further deny that it was not properly certified; respondents further deny that complainants ancestor never knew that his wife and children had been dispossessed of the lands now in the possession of respondents; and they further deny that the said ancestor was not guilty laches. Your respondents here admit that they

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have recently purchased from the mother of complainants, and the widow of their ancestor, her dower interest in the lands now in possession of said respondents.

Further answering respondents state and charge that they purchased the lands described in the aforesaid deed from J. K. P. Barron, believing that he was the duly constituted and authorized attorney in fact of William N. G. Barron, Jr.; that they thought and believed that he had full power and authority to act as he did act; that they paid for the lands fully as much as it was worth at the time they bought it, and that the price paid was full and adequate; they further state that they went into possession of said lands immediately after their purchase thereof ^{and have been in possession ever since} and that they have long since paid the full consideration recited therefor in the said deed; that they have, by great labor and expenditure of money very largely improved the said lands and increased its value. They further state and charge that they never knew or heard that there was any defect or imperfection in the execution of the aforesaid power of attorney until within the last six weeks. They say further that they did not know until a short time before the said power of attorney was recorded in Lee County that the same had not been recorded, and they state that the only reason that the same was not recorded long since was because of the fact that it was miss-laid, and for the time being lost by J. K. P. Barron, the party who had control over the said instrument. Your respondents state and charge that the contract between them and the said J. K. P. Barron was founded upon a good and valuable consideration which has long since passed from them to the said Barron, attorney in fact; that it

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is certain as to its subject matter, its stipulations, its ~~purposes~~ ^{purposes} and its parties, and that the same is absolutely free from any fraud, miss-representation, mistake or illegality ~~as far as they are concerned.~~

Respondents further state that both complainants' father and complainants themselves knew of the facts in relation to the purchase of respondents at or very shortly after the date thereof, and that until now no complaint has ever been made with respect thereto; and respondents state that ~~x~~ until within a few weeks since when a suit was brought by the widow of the said William N. G. Barron, Jr., deceased, to recover her dower interest in their said lands they had not the remotest idea that there was or could be any defect in their title to said lands either legal or equitable.

Respondents admit that the aforesaid power of attorney is not under the seal of the said William N. G. Barron, Jr. which fact is accounted for, as they believe and charge, merely by the inadvertence of the said Barron who fully intended to affix his seal to the said instrument.

Under these circumstances respondents are advised that while the deed to them from J. K. P. Barron, attorney in fact, is possibly not good and valid as a conveyance of the legal title that it is, nevertheless, good and valid as a contract to convey on the part of the father of the said complainants, and that ~~an~~ a Court of equity will on the prayer of respondents require the said complainants to execute to the said respondents a deed conveying to them the legal title to the lands mentioned and described in the aforesaid deed to them of J. K. P. Barron, attorney in fact.

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Wherefore, the prayer of respondents is that complainants' bill be dismissed with costs; that this ~~their~~ answer be treated as a cross bill, that all of the complainants be made parties defendants hereto, and required to answer same but not under oath; that proper process issue; that a guardian ad litem be appointed for the infant complainant, P. H. Barron; that a commissioner be appointed with directions to convey to ~~complainants~~ ^{respondents} the interest of said infant complainant ~~xx~~ ^x in the aforesaid lands; that the said other complainants be required within a short time to convey to respondents the legal title vested in them in and to said lands to respondents, and in default thereof that a commissioner be appointed and directed to make such conveyance for them and in their names; and for all such other, further and general relief as may be proper.

And respondents will ever pray.

John Gilly

James H. Collier.

By Counsel _____

Bullitt McDowell

P. Q.

James P. Barron et al.

vs.

John Silly et al.

Joint & separate demur-
rer, ^{Answer} Plea and Cross Bill of
John Silly & James H.
Collins

Filed in open
Court by leave
thereof Nov. 10th
1893 J. A. G. Hyatt

And respondent will aver, &c.

John Silly

James H. Collins

Pl. Counsel

P. O.

1 To the Honorable H. L. H. Morrison Judge
2 of the Circuit Court for Lee County, Virginia;
3 The separate answer of P. H. Bor
4 ron, an infant under the age of twenty
5 one years, by B. H. Sewell, his guardian
6 ad litem, assigned to defend him in this
7 suit, to a cross bill of complaint exhib
8 ited against him and others, in the Circuit
9 Court for the said County, by John Gilly
10 et al.

11 The respondent, reserving to himself the
12 benefit of all just exceptions to the
13 said bill, for answer thereto, or to so
14 much thereof as he is advised that
15 it is material he should answer, by
16 his said guardian ad litem, answers
17 and says:—

18 That he is one of the complainants
19 in the original bill filed against the
20 ~~the~~ said complainants in said
21 cross-bill, and asks that the cause
22 of complaint in said original bill
23 be considered herewith; that his
24 co-defendants to said cross-bill
25 who are adults have answered
26 said cross-bill, and your respon
27 dent ~~there~~ calls for strict proof
28 of the allegations in said cross-bill.
29 Respondent further states that he is an
30 infant of tender years, and by reason
31 of his infancy is incapable of under
32 standing, or taking care of his rights

1 and interests. He therefore, by his
2 said guardian, commends himself
3 and his rights and interests to the
4 protection of the Court, and prays
5 that no decree may be pronounced
6 which will tend to his prejudice.
7 And having fully answered
8 the said respondent prays to be
9 hence dismissed with his rea-
10 sonable costs in this behalf expended,
11 and he will ever pray etc.

12 B. H. Sewell Guardian
13 ad litem for P. H. Boston.

14 Sworn to before me as the law requires
15 by B. H. Sewell. Nov. 15th 1893

16 J. A. Hyatt D. C.

John Gilly et al.

as {
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} ~~George~~ ^{James} ~~draw as~~
Litem.

J. O. Borrow et al.

Filed in open court
by leave thereof Nov.
15th 1893. J. A. Hyatt D.C.

Virginia: Lee County County, to-wit.

In the Circuit Court of said County.

The joint and separate demurrer, plea and Answer of James P. Barrow, R. P. Barrow and Lallie A. Bailey to a Cross Bill filed by John Gilly and James H. Collier in this Court against these Respondents and P. H. Barrow, Infant &c.

Respondents say for demurrer to said Cross Bill that the same is not sufficient in law, whereof they pray Judgment.

For plea respondents come by their Attorneys and say that the supposed cause of action of the complainants, if any they have, did not accrue to them in ten years before the commencement of this suit, and, therefore, they ought not to have or maintain said Cross bill against these Respondents.

For answer respondents state ~~and~~ and charge as follows: That they have not been competent to sue for a period of five years having been under age.

These Respondents admit as stated by the complainants in their Cross bill and Answer, that that the Power of Attorney

is not a paper sufficient to authorize the execution of a deed and the conveyance of any real estate whatever, but they deny that it is a contract that ought to be enforced by compelling your respondents to convey the land in question. And they further state that their father never saw said Power of Attorney and insist that the Complainants be required to prove the genuineness of the paper under which they base their claim, as well as its due execution and acknowledgment. That it is untrue that Complainants only first knew that said Power of Attorney was questioned in a legal sense a few weeks ago, but it is true that Complainants knew that the same was not under seal, and not properly signed, or acknowledged on the 27th day of January 1876; that Complainants were and are presumed to have known the extent, the kind, and the legal character of the authority of the Agent J. K. P. Barrow with whom they undertook to trade; that they therefore did know that J. K. P. Barrow was not authorized to convey said land by deed or

otherwise; that it did not empower him to contract.

Respondents further say that if the complainants ever had a contract that would entitle them to a conveyance that the same is not a sealed instrument, and they should have sued to enforce it within five years, which they have not done, but they have been guilty of gross laches.

Respondents further answering say ~~that the~~ ^{and so called contract &} Power of Attorney sought to be enforced by complainants was not unsealed inadvertently as is charged by them and they deny that there was a contract.

Respondents deny that it is true that the complainants have ever paid one cent for the land in controversy as stated in said cross bill, and that it is not true that they have greatly improved said land; that said so called Power of Attorney was never mislaid or lost, but that the same was secreted in order that its defects and worthlessness might not be discovered.

Your respondents further state

And deny that the Contract between Complainants and J. R. P. Barron was founded on a good and valuable Consideration or that any consideration ever passed; and they further deny that it is certain as to its subject matter, its stipulations, its purposes and its parties; And they specially deny that it is absolutely free from fraud, misrepresentation, mistake, or illegality: that respondents did not know anything about the Contract and deed made between J. R. P. Barron and John Gilly and James H. Collins on the 27th day of January 1876; that they were then all infants of very tender years.

Having fully answered they pray to be hence dismissed with their costs.

M. H. Ely } Atty for
Wm A. Orr } Respondents.

J. P. Barrow et-als

~~Ans~~ Ans to Y. Bill

John Gilly & J. H. Wallis

M. G. Cady } attys for
Wm. Q. Orr } Respondents

to convey.
The undersigned said decree as it is not all that complainants desired

J. P. Barron et al
vs } Decree Final
John Gilly et al

This cause came on again to be heard this day on the papers formerly read herein and on the report of special Commissioner H. C. McDowell, Jr. filed Nov 13, 1894, and was argued by Counsel; and as it appears that by clerical error in the entry of the decree of June 12, 1894 rendered in this cause Robert P. Barron's name was omitted in the part of said decree which requires the several adult complainants to convey the land in controversy; and whereas it was intended that said Robert P. Barron should be ordered to convey and in fact he was so ordered in the original draft of said decree; and as it appears that none of the complainants has yet conveyed; and as it appears that special Commissioner H. C. McDowell, Jr. has executed & filed for inspection a deed ~~conveying to John Gilly and James H. Collier~~ for & the half of all the original complainants to John Gilly & Jas H. Collier

conveying the land in controversy; it
is adjudged, ordered and decreed
that said deed be & the same is
hereby approved and confirmed;
and said Commissioner will
withdraw said deed and (on receipt
of the ~~usual~~ fee of \$5 therefor) will
deliver the same to John Gilly
& Jas H Collier.

And nothing further appearing
necessary to be done herein
it is ordered that this cause be
stricken from the docket.

J. P. Farron et al

vs
Decree Final

John Gilly et al

Entered in Chancery

Book Page 82

Entered

W. J. M.

Nov 14/94

June 13, 1894
OB 5p27

James P. Barron et al
vs
John Gully et al
and
John Gully et al
vs
James P. Barron et al

These causes came on again to be heard on this the day of June 1894, on the papers formerly read therein and was argued by counsel, whereupon the court being fully advised it is adjudged, ordered and decreed that the plaintiffs be dismissed and that the defendants in the original suit recover their costs herein; and further it is ordered and decreed that James P. Barron and Sallie A. Bailey and H. C. McDowell Jr. (who is hereby appointed a special commissioner for the purpose) for the instant P. H. Barron, shall within sixty days from this date execute and deliver to John Gully and James H. Collins from deeds with covenants of special warranty, conveying to them jointly all the right title and interest of the aforesaid plaintiffs and cross-defendants in and to the tract of land described in the deed or intended deed of January 27, 1876 filed with the papers of these causes. And if said conveyances be not properly executed, acknowledged and delivered within the time above prescribed then the said H. C. McDowell Jr. who is hereby appointed a special commissioner for the purpose, is directed to execute acknowledge and deliver for said defendants a deed as hereinabove specified. And it is further ordered that the cross-complainant recover of James P. Barron the next friend of the infant R. P. Barron and of Sallie Bailey their costs in this cross-suit not including any attorney fee. The commissioner above appointed is directed to report his action hereupon to this court at some future term hereof.

continued

RECORDED:

December 30, 1879, Wise County, D.B. 5,
page 136.

NOTE:

The lien retained in the above deed was released by deed from A.J. Ewing Trustee and Commissioner to Isaac Blanton dated May 4, 1888, properly executed and acknowledged May 4, 1888, before W.S. Palmer Notary Public Wise County, Va., and recorded May 28, 1888, Wise County, Deed Book (Release) No. 1, page 24.

DEED: Dated April 7, 1888.

Isaac Blanton and S.F., his wife,

To

I. F. Blanton.

CONSIDERATION:

Of the fact that said second party hereby agrees to settle with Judge Ewing the remaining money due him on the purchase money of this part of the original tract sold by A.J. Ewing to said Isaac Blanton. A Lien being Retained to secure said payment to said Ewing.

CONVEYS:

A certain tract of land in Wise County, Va., on South Fork of Powells River adjoining lands J.P. Wolfe, Henry Wampler and Hiram Shepherd, described as follows:

BEGIN at middle of the river opposite a beech a short distance below where the Bum Hollow road crosses the river, and running a straight line to a stone, a little South-west of a small spring; thence easterly to the Bum Hollow road near a large beech; and with said road to Henderson Wells line; and with said Wells line to a hickory corner to H. Wells land and corner to J.C. Wells and H.P. Shepherd; thence with said Shepherd's line to a large poplar (the beginning corner to the tract conveyed by A.J. Ewing to said Isaac Blanton); thence N 24 W 34 poles to black oak on top of a spur, corner to Henry Wampler's land; N 37½ E 22 poles 20 links to a large chestnut; N 22 E 21 poles 7 links to a poplar; N 65½ E 14 poles to a locust and lynn; N 20 E 29 poles to a poplar on a spur; N 54 E 25 poles to a stake in middle of the river; with the middle of the river to the BEGINNING.

Containing about 51 acres, more or less.

EXCEPTION:

All walnut timber.

COVENANTS:

General Warranty.

SIGNED & SEALED:

Correctly.

ACKNOWLEDGED:

April 7, 1888, before W.S. Palmer Notary Public Wise County, Va., Correctly.

Jas P. Barron et al

Pliffs

^{vs} }
John Gilly et al
and

Defts

John Gilly et al
^{vs} }

Cross-Complts

Jas P. Barron et al

Cross Defts

These causes came on again to be heard on this the — day of June 1894, on the papers formerly read herein and was argued by counsel, whereupon, the court being fully advised, it is adjudged, ordered and decreed that plaintiffs will be dismissed and that the defendants in the original suit recover their costs thereon; and further it is ordered & decreed that James P. Barron, R. P. Barron and Salie A. Bailey, and H. C. McDowell Jr, (who is hereby appointed a special Commissioner for the purpose) for the infant P. H. Barron, shall within sixty days from this date execute and deliver to John Gilly and James H. Collier, proper deeds, with covenants of special warranty, conveying to them jointly all the right, title and interest

of the aforesaid plaintiffs and cross-
defendants in & to the tract of land
described in the deed or intended
deed of Jan'y. 27, 1876 filed with
the papers of these causes. And if
said conveyances be not properly
executed, acknowledged and delivered
within the time above prescribed,
then the said H. C. McDowell, Jr., who
is hereby appointed a special
commissioner for the purpose, is
directed to execute ^{acknowledge} and deliver
for said adult cross-defendants
a deed as herein above specified.
And it is further ordered that the
cross-complainants recover of
Jas P. Barron, of Jas P. Barron
the next friend of the infant R. P.
Barron and of Sallie J. Bailey
their costs in their cross-suit includ-
ing the attorney fee of fifteen dollars
fixed by statute.

The commissioner above appoint-
ed is directed to report his actions
hereunder to this Court at some
future term hereof. And this
Cause is continued.

Gas P. Barron et al

}

John Gilly et al

John Gilly et al Decree

}

Gas P. Barron et al

Enter

June 13 1874

W L M

Jas. P. Barron et al, Plaintiffs

vs

John Gilly et al, defendants

And

John Gilly et al cross-complainants

vs

Jas. P. Barron et al cross-defendants

These causes came on this ^{16th} day of ~~March~~ ^{March} 1894 to be again heard on the papers formerly read herein and on the depositions of J. W. Orr, John Gilly, Erno Hyatt and Jas H. Collier and exhibits filed therewith and exceptions endorsed thereon and was argued by Counsel; &

Whereupon it is adjudged, ordered and decreed that plaintiffs be dismissed and the defendants in the original suit recover their costs therein expended; and further that the complainants Jas. P. Barron, R. P. Barron and Sallie A. Bailey and H. C. McDowell, Jr., who is hereby appointed a special commissioner for the purpose, for the infant defendant P. H. Barron shall within sixty days from this date execute and deliver to John Gilly and James H. Collier proper deeds of special warranty conveying to them jointly all the right, title and interest

the court not being fully advised this cause is continued.

of the aforesaid plaintiffs and cross-defendants in and to the tract of land described in the deed or intended deed dated Jan'y 27, 1876 filed in the papers of this Cause. And if said conveyances be not properly executed, acknowledged and delivered within the time above prescribed, then the said H.C. McDowell, Jr, who is hereby appointed a special Commissioner for the purpose, is directed to execute and deliver for said adult cross defendants a deed as herein above is specified.

And it is further ordered that the said cross-complainants recover of the Jas. P. Barron, Jas. P. Barron the next friend of P. H. Barron, infant, R. P. Barron and Sallie A. Bailey their costs in said cross-suit expended including the statutory attorney fee of fifteen dollars.

The Commissioner above mentioned will hereafter report his actions hereunder to this Court at some future term, and this Cause is continued.

Jas. P. Barron

vo } Dece

John Lilly et al

E.C.O.R. Page 601

Mar 16/1894

Enter
H.S.R.M.

Mar 16/94

James P. Barron et al. } In Chancery.
vs
John Gilly & J. H. Collier

This cause came on this day to be heard upon the bill, the exhibits "A," "B" and "C" filed therewith; and the joint and separate demurrer, plea, Answer and Cross bill of the defendants John Gilly and James H. Collier filed at this term of the Court by leave of the Court, and the joinder of the plaintiffs in said demurrer of the defendants, and the plaintiffs general replication to the defendants plea and answer, and the joint and separate demurrer, plea and answer of James P. Barron, R. P. Barron and Lallie A. Bailey this day filed by leave of the Court to the said Cross Bill of John Gilly and James H. Collier, ~~and this cause is continued until the next term of this Court~~; the answer of the infant defendant O. H. Barron, by his guardian ad litem; and on the joinder in demurrer by the Cross-complainants and their general replication to the plea and answer of the adult Cross-defendants and to the answer of the infant cross-defendant, and by consent this cause is continued

J. ~~A.~~ P. Baron et al
vs ~~J.~~ Lerner

John Gilley et al
Entered bk O.B. p. 34
Nov. 15th 1893.

Entered
H. S. K. M.
Nov 14th 1893

To John Gilly and James H. Callio:
Take notice, that on the ~~10th~~⁵ day of February,
1894, at the Office of James W. Orr in
the town of Jonesville, Va, between the
hours of 9 o'clock A.M. and 6 o'clock
P.M. of that day, we shall proceed to
take the depositions of James W. Orr
and others to be read as evidence
in our behalf in the suit and
cross suit in equity depending
in the circuit Court of Lee County,
Va in which we are plaintiffs
and cross-defendants, and you
are defendants and cross-com-
plainants; and if from any cause
the taking of said depositions be not
commenced on that day, or if com-
menced, if they be not completed on
that day, the taking of said depositions
will be adjourned and continued
from time to time and from place
to place until they are completed.

James P. Barrow

P. H. Barrow

R. P. Barrow

Sallie A. Briley

By

M. G. Ely & Atty's
Wm. A. Orr

Notice accepted
J. P. Barron et al
att. for
Gilly et al

J. P. Barron et al
vs } Notice to take Depos
John Gilly et al

1 The deposition of James W. Orr
2 taken before me, H. C. Joslyn, a
3 Justice of the Peace for Lee County, Va., at
4 the Office of James W. Orr, in Jonesville, Va. on
5 the 5th day of February, 1894, between the hours
6 of 9 A.M. and 6 P.M. pursuant to annexed
7 notice, to be read as evidence on behalf of
8 the plaintiffs in a certain Chancery suit now
9 pending in Lee Circuit Court, wherein James P.
10 Barron et al are complainants and cross
11 defendants, and John Gilly and James H.
12 Collins are defendants and cross Com-
13 plainants.

14 Pursuit Wm A. Orr atty for complainants and
15 H. C. McDowell atty for depts.

16 James W. Orr a witness of lawful age being
17 first duly sworn deposes and says:

18 Q. Were you Clerk of the County Court of Lee County,
19 Va. during the year 1875, and if so how long
20 thereafter?

Ans 21 I was clerk of the County Court of Lee County Va. during
22 the year 1875, and continued as such until July 1st 1881.

23 Q. Have you read the original paper, called a
24 Power of Attorney in the bill and pleadings
25 in this case, and the deposition of John
26 Gilly lately taken and now on file
27 in the cause?

Ans 28 I have read the paper referred to and depositions of John Gilly.
29 Q. Were you ever paid any money by any person for
30 say or fee to record said Power of Attorney.

Ans 31 I was not. At least if I was I have no recollection of
32 it, and there is nothing on the paper showing it, and it was

1 my custom, as clerk, when the fee was paid for
2 recording such papers at the time they were filed for
3 record, to tax the fee on the back of the paper and
4 mark it paid.

4⁵ Have you examined your fee books to see
6 whether or not you have any charge for
7 tax or for recording said power of Attorney
8 against ^{either} Wm. H. Barrow, Jr., J. K. P. Barrow, J. K.
9 P. Barrow, Attorney in fact, John Gilly or
10 James H. Collier? State for what years your
11 fee books are that you have examined.

Ans 12 I find no such charge against any of the parties
13 mentioned, and have examined my fee books in which
14 charges were made for such fees from the time I
15 commenced clerking January 1st 1871, to July 1st 1881,
16 when my terms expired.

5⁷ Were you requested by any person to record
18 said Power of Attorney on the 1st day of
19 December, 1876, or, upon any other day
20 thereafter, especially within a few days there-
21 after?

Ans 22 I have no recollection of ever being requested, by any one,
23 at any time, to record said paper, and I am satisfied I
24 was not so requested at any time.

25 Cross-Examination

1 26 Is it not possible that the power of atty
27 might have been left with you for
28 record & the tax & fee paid in cash
29 & that you by inadvertence overlooked
30 it?

Ans 31 While such a thing might have occurred, I have no
32 idea such was the case.

1 It seems from what our witnesses recollect
 2 that the power of attorney and the deed
 3 to Jno Gilly & Collier were left with
 4 you for record the same day, which
 5 was while a term of Court was in progress;
 6 that J. K. P. Barron handed you the
 7 power of atty asking you to record
 8 it & that John Gilly, later in the same
 9 day in the Court room handed you the
 10 deed & paid you in cash for the tax
 11 & record fee. ^{for the deed} Now that this is stated do
 12 you have any recollection of the
 13 occurrence?

14 Objected to because no witness
 15 has stated that said Power of Attorney
 16 or deed were left with this witness for
 17 record on the same day, and that
 18 it was a Court day, and that
 19 J. K. P. Barron handed the witness
 20 the Power of Atty, & in short the
 21 question assumes that facts are
 22 proved which are not proved.
 23 Wm A. Orr

Sus 24 I have no recollection of the occurrence as above
 25 stated.

26 Is it not a fact that J. K. P. Barron
 27 used the money which he got from the
 28 sale of the land in controversy in the settle-
 29 ment of claims against Wm ~~the~~ S Barron,
 30 Jr

Sus 31 I do not know how this was. Have ^{& had} no knowledge
 32 of the matter whatever that I am now apprised of.

4 1 Did you not tell Jas. H. Collier here
2 in Jonesville recently that you
3 knew more of the facts in this case
4 than other man, or words to that effect?

Sus 5 No I did not.

5- 6 Is it not a fact that when the
7 above-mentioned power of atty was
8 finally put to record — Aug 15, '92 —
9 it was found in the Lee County Court
10 Clerk's Office; and is not a further
11 fact that it had been lost for a
12 long time in the said Office.

Sus 13 I do not know how that was.

14 And further this deponent soith not.
15 James W Orr.

16 The further taking of depositions
17 in this case, is hereby adjourned
18 until February 9th 1894. at the
19 same place, by consent of the
20 parties, given under my hand
21 this Feby 5th 1894.

22 H. C. Foslyn J. P.

23 Met this February 9th 1894 pursuant
24 to adjournment, and the plaintiff
25 not desiring to introduce any witness
26 this deposition is closed.

27 Given under my hand this 9th
28 day of February 1894.

29 H. C. Foslyn J. P.

30 Virginia Lee County To-wit:

31 J. Henry C. Foslyn a Justice
32 of the Peace for the said County.

1 do hereby Certify, That the foregoing
2 deposition of James Warr, was
3 duly taken, sworn to and subscribed
4 before me, at the time and place
5 mentioned in the Caption of the
6 same, signed under my hand
7 this 9th day of February 1894.
8 Henry C. Foslyn J.P.
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J. P. Barrow et al

vs } Leaves

John Kelly et al

Filed July 9th 1894.
Rec'd of H. C. Joslyn J. P.
A. B. Munsey Clerk

Witness:
J. W. Orr.

J. P. Fee \$1.50

Original

To James P. Barron, P. H. Barron, R. P.
Barron, Sallie A. Bailey (and
B. H. Sumrell, Esq. Guardian ad litem for P. H. Barron)

Take notice, that on the 23^d day of Jan'y, 1894, at the office of Buellet McDowell
, in the town of Big Stone Gap, Va, between the hours of 9
o'clock a. m. and 6 o'clock p. m. of that day, ^{we} I shall proceed to take the depositions of John
Gilly, Jas. H. Collier, J. K. P. Barron, ^{Thomas J. Barron} Enos Wyatt, C. A. Williams
and others ^{our} ^{cross suit} to be read in evidence in my behalf in the suit in equity depending in the Circuit Court of
Lee County in which you are plaintiffs & cross defendants
Plaintiff and we are

defendants and cross-complainants

Defendant; and if from any cause the taking of said depositions be not commenced on that day,
or if commenced, if they be not completed on that day, the taking of said depositions will be
adjourned and continued from time to time and place to place until they are completed.

Respectfully,

John Gilly & Jas. H. Collier
by counsel

Executed within by delivering true copies
hereto to P. H. Barron, R. P. Barron & Ballie A Bailey
on Jan'y 11, 1894 & on James P Barron on
Jan'y 13, 1894 - G. E. Gilly

Virginia, Wise Co to-wit
This day G. E. Gilly whose name
is signed to the foregoing return appeared
before me in the state & county & thereon
made oath that the above return is
true. Given under my hand this 18th
Jan'y 1894
H. C. McDowell Jr
H. P. Wise Co. Va

See for delivering
copies or paid by
G. E. Gilly.

Original

To James P. Barron, P. H. Barron, R. P. Barron,
Sallie A. Bailey and B. H. Sewell, Esq. Guardian
ad litem for P. H. Barron

Take notice, that on the 23 day of Jan'y, 1894, at the office of Bullitt & McDowell
in the town of Big Stone Gap, Va., between the hours of 9
o'clock a. m. and 6 o'clock p. m. of that day, ~~I~~ ^{we} shall proceed to take the depositions of John
Gilly, Jas. H. Collier, J. K. P. Barron, Enos Hyatt & A. Williams
and others ^{our} ~~my~~ ^{& cross-suit} to be read in evidence in ~~my~~ ^{our} behalf in the suit in equity depending in the Circuit Court of
Lee County in which you are plaintiffs & cross-defendants
Plaintiff and we are
defendants and cross-complainants

Defendant ; and if from any cause the taking of said depositions be not commenced on that day,
or if commenced, if they be not completed on that day, the taking of said depositions will be
adjourned and continued from time to time and place to place until they are completed.

Respectfully,

John Gilly & Jas. H. Collier

Executed Jan^y the 16. 84
by delivering a copy
of the within notice
to B. H. Sewell
Guardian ad. litem
for Patrick H. Barron
C. E. Flannery. S. L. C.

The depositions of John Gilly, James H. Collier and Enos Hyatt, taken before John B. Payne, Notary Public for Wise County, Virginia, at the office of Bullitt and McDowell, in Big Stone Gap, Virginia, on January 23rd, 1894, between the hours of 9 A. M. and 6 P. M., pursuant to annexed notice, to be read as evidence on behalf of the defendants in a certain chancery suit now pending in Lee Circuit Court, wherein James ^{and cross-defendants, and John Gilly & James H. Collier are defendants} P. Barron et al are complainants, and cross complainants.

Present ~~W. M. Orr~~ Wm. A. Orr and N. G. Ely, attorneys for complainants, and H. C. McDowell, attorney for defendants, John Gilly and James H. Collier.

John Gilly, a witness of lawful age having first been duly sworn, deposes as follows:

Preliminary examination by counsel for ~~defence~~ complainants.

Q. 1-Are you one of the defendants in this suit, and cross complainant?

A. 1-Yes, sir, I am one of the defendants and one of the complainants in the cross suit.

~~Qxx2x~~

The deposition of John Gilly is objected to because W. N. G. Barron, Jr. is dead, and because J. K. P. Barron was not an agent for W. N. G. Barron, Jr., and because the witness is a party to the original contract.

Wm. A. Orr and N. G. Ely, attorneys.

DIRECT EXAMINATION.

Q. 1-Please state who are the heirs at law of W. N. G.

1 James P. Barrow et al
2 vs
3 John Kelly et al

4 Virginia: In the Circuit Court of Lee County.
5 Ex. No. 3. The Supposition of Enoch Hyatt
6 is excepted to because irrelevant and
7 immaterial in so far as it tends to
8 prove the signature of Wm. H. Barrow, Jr.
9 to the Power of Atty in question, the said
10 paper being a foreign Power of Atty as
11 it shows on its face, and not
12 being properly authenticated for record in
13 Va. as is also shown upon its
14 face, and for that reason not
15 admissible as evidence for any
16 purpose in said State. Though
17 the signature should be proved by
18 oral testimony. See Sec. 3344,
19 Code, 1887.

20 The same exceptions are
21 made to the Suppositions of John Kelly
22 and James H. Callin.

23 July 14th 1894.

24 Wm. A. Orr Atty &c

John Gilly et al
vs + ad } Exception to
Bepos.

J. P. Barrow et al
Ex. No. 3 —

In other Ex. No. 3
acts of Lepa

Wm. A. Dyer

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Barron, Jr., and whether or not W. N. G. Barron, Jr. is dead or alive?

A. 1-They say he is dead ---I suppose he is.

The foregoing answer is objected to because hearsay.

Wm. A. Orr.

Q. 2-Please state why you use the language "they say he is dead"?

A. 2-Well, Jim Barron told me that he was out at Missouri, I believe it was Missouri, -- and told me that he was dead.

Q. 3-It is stated in complainants bill that W. N. G. Barron, Jr. left the State of Virginia many years since for fear of being arrested and charged with murder, and that he has been absent from this state and unheard of for more than seven years, and it is stated in the answer and cross bill in this cause that the defendants admit that he is dead. Please state whether or not he has been absent as stated, and whether or not his family believe him to be dead, and why?

A. 3-He has been absent for 17 or 18 years, and his family report that he is dead. I understood they reported it because J. P. Barron was out there looking after him and found that he was dead out where he were. I don't know just the place.

Q. 4-Please state who are the heirs at law of W. N. G. Barron, Jr.?

A. 4-J. P. Barron, R. P. Barron and Sallie M. Bailey and H. P. Barron.

Q. 5-Do you mean H. P. or P. H. Barron?

A. 5-I mean P. H. Barron, or whatever his name is ---Pat Barron, his name is.

Q. 6-I now show to you the original paper in two pieces

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purporting to be a power of attorney from W. N. G. Barron, Jr. to J. K. P. Barron, ^{as} ~~his~~ his attorney in fact, and I ask you to file the same with your deposition, and also ask you to state whether or not the signature thereto is that of the said W. N. G. Barron, Jr.?

The question and answer are objected to because the certificate of the signature of W. N. G. Barron, Jr. is the highest evidence, if a certificate.

Wm. A. Orr.

A. 6-I now file the said paper with my deposition. This is like his hand write that I have seen. I have seen his signature to ~~the~~ notes. It looks like his signature.

Q. 7-State whether or not the notes that you mentioned, to which the signature of W. N. G. Barron, Jr. was affixed were treated as being notes made by W. N. G. Barron, Jr. Also how many such notes you have seen?

A. 7-They were treated as his notes in the settlement of the Collier estate, which Mr. Bailey as commissioner settled. I don't remember whether there was two or three of them.

Q. 8-Founding your opinion on the fact of your knowledge of his hand writing derived from such notes, please state whether or not it is your x belief and opinion that the signature to said power of attorney which you have filed is his genuine signature?

A. 8-I think it is.

Q. 9-Please state whether or not the widow and the heirs, or any of them, of W. N. G. Barron, Jr. knew of the existence of the said power of attorney at or shortly after the time it appears to have been made?

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Question and answer objected to because the widow is not a party to this suit, and not interested, and because the plaintiffs in this suit were infants.

Wm. A. Orr.

A. 9-They did know of it. It was there present when the deed was made by J. K. P. Barron and Mrs. Barron.

Q.10-Please state whether or not any other of the members of the family of W. N. G. Barron, Jr., or any other persons interested as creditors of his, knew of the existence of said power of attorney at or about the time it was made?

Objected to because immaterial and irrelevant.

Wm. A. Orr.

A.10-They did.

Q.11-State ~~whx~~ who?

A.11-J. K. P. Barron knew of it, W. N. G. Barron, Sr., father of W. N. G. Barron, Jr., James H. Collier---he was there at the time--- and myself. I believe Mr. Enos Hyatt, but I don't know, and Mr. ^{Bailey} ~~Barryman~~ that took the acknowledgment of the deed.

Q.12-Please state how the said parties treated the said power of attorney as to its being genuine and valid or not?

Objected to because immaterial and irrelevant.

Wm. A. Orr.

A.12-It was reported there as good ---Mr. J. K. P. Barron said it was good--- and we all thought so.

Q.13-I mean how was it treated with regard to the genuineness of the signature thereto?

A.13-They all said it was his hand write, and I knew it was his hand write, and we all thought it was a genuine power of attorney.

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Q.14-Please state whether or not J. K. P. Barron accepted said power of attorney and acted under the same?

A.14-He did.

Q.15-State what acts he did under said power of attorney?

A.15-He made a deed to the land which we bought of him to Gilly and James H. Collier, and he settled the estate of W. N. G. Barron, Jr. generally.

Q.16-Please state how J. K. P. Barron happened to be settling the business of W. N. G. Barron, Jr., and also state what he did, so far as you know, with the money derived from the sale of the said land?

A.16-W. N. G. Barron, Jr. got J. K. P. Barron to come to Virginia from out West where he was to settle up his business, and made him the said power of attorney. W. N. G. Barron, Jr. had been the administrator of the Collier estate and was indebted to the heirs and claimants under the heirs of the Collier estate, and J. K. P. Barron paid seven or eight hundred dollars of the money that we gave him for the land to parties claiming under the widow and heirs of Aaron J. Collier.

Q.17-Who were the claimants under the Collier estate to whom this sum was paid, and how did they ~~arise~~ happen to be claimants thereunder? To whom was this seven or eight hundred dollars paid?

A.17-It was paid to the infant heirs of the Collier estate, for whom we were the guardians, and the widow, whose share of the estate we also owned.

Q.18-State what the said J. K. P. Barron did with the remainder of the money derived from the said sale?

A.18-I think he paid Gen. Pridemore two or three hundred dollars, a debt that W. N. G. Barron, Jr. owed to Gen. Pride-

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more, and \$240.00 he paid to the widow of W. N. G. Barron, Jr. I don't know what he paid the other into --- into the debts of W. N. G. Barron though, he told me.

The latter part of this answer objected to because hearsay.

Wm. A. Orr.

Q.19-State why the said land that you and Collier bought was sold, and why there was any need of having ^{the} affairs of W. N. G. Barron, Jr. settled up?

A.19-Because he owed a good many debts and the land was liable to be sold.

Q.20-State whether or not there were existing attachments against the land or property of W. N. G. Barron, Jr., and, also whether or not other attachments were feared?

Objected to because the attachments are the highest evidence.

Wm. A. Orr.

A. 20-There was attachments from W. N. G. Barron, Sr. amounting to about \$1100.00. I think Gen. Pridemore had an attachment or a judgment, I won't be certain which.

Q.21-Then as I understand you the land that you and Collier bought was sold by directions of W. N. G. Barron, Jr., and in order to prevent his creditors sacrificing the land. Am I right or not?

A.21-It was sold on account of his being in debt, the land being liable to be sold for his debts.

Q.22-State whether J. K. P. Barron ever applied any of the money derived from the sale to you and Collier to any other purpose than that of paying the debts of W. N. G. Barron or to his widow?

A.22-Don't think he did. No sir, think not.

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Q.23-What relationship existed between W. N. G. Barron, Jr. and J. K. P. Barron?

A.23-They are brothers.

Q.24-Please state how much you and Collier gave for said land and whether or not it was all paid?

A.24-We gave \$1500.00 and paid it all. It is all paid.

Q.25-I now show you what purports to be an original deed from W. N. G. Barron, Jr., by J. K. P. Barron, his attorney in fact, and by Eliza J. Barron, to yourself and James H. Collier and ask you to file the same with your deposition?

Objected to because J. K. P. Barron is not the agent of W. N. G. Barron, Jr.

Wm. A. Orr.

A.25-I now file the same with my deposition, and marked No. 2.

Q.26-Please state the number of acres conveyed by the said deed, and what ~~was~~ was the fair value of said land at the time said deed ~~was~~ made?

A.26-I don't remember exactly. It was laid off into shares, and there was a part of it that lay in the dowry. There could not be a sale of the dowry. I suppose there was about 150 acres. It was worth from ten to twelve dollars an acre at that time. It might not have been quite 150 acres.

Q.27-Please state whether at ~~that~~ ^{the} time said purchase was made times were easy and money plentiful, or whether it was a period of depression?

A.27-I suppose that times were about like usual when we traded. I don't remember that they were any harder than ~~usual~~ usual.

Q.28-Please state whether or not J. K. P. Barron could at

-8-

that time, considering the necessity for an immediate sale, have obtained a larger price for said land than you and Collier gave him?

A.28-He could not have obtained a larger price.

Q.29-It is said in the ^{pleadings} ~~proceedings~~ in this cause that you and Collier have been in possession of said land since the time of your purchase, and it is also said that you and he have ~~been~~ ~~xxxx~~ by labor and expenditure of money considerably increased the value of said land. Please state the facts connected therewith?

A.29-We have been in possession ever since we bought it/ and we have also increased the value of the land and greatly improved it. It is all sowed in grass, cleaned up and fenced

Q.30-State whether or not land in that vicinity has risen or decreased in value since the time of said purchase?

A.30-It has increased in value.

Q.31-What is the present value of said land in your estimation?

A.31-The land is worth from \$15.00 to \$18.00^{an acre}, or over now Land adjoining this land sold for \$15.00 an acre in the year 1893.

Q.32-It is charged in complainants bill that the sale of the said lands to you and Collier was fraudulent; that the power of attorney was void and fraudulent; that W. N. G. Barron, Jr. never knew that said land had been sold, and, in effect, that you and Collier conspired and colluded with J. K.P. Barron to defraud W. N. G. Barron, Jr., or his wife and children. Please state the facts about this?

A.32-Well, we bought the land and paid all it was worth; they knew all about it at the time, and there was no fraud in

-9-

it that we knew of. If we had known there was any fraud in it we would not have bought it. We bought it square and paid for it.

Q.33-When was it that James P. Barron learned that his father, W. N. G. Barron, Jr., was dead?

Objected to because hearsay.

Wm. A. Orr.

A.33-Seven or eight years ago, I don't remember exactly the time. Some seven or eight years ago I suppose.

Q.34-State who had possession of the aforesaid power of attorney at the time the deed was made, and since then, and also state why it was not recorded sooner?

A.34-J. K. P. Barron had possession of the said power of attorney. He sent it to the Clerk's office, and by the neglect of the Clerk it was not put upon record. I went with him when he took it there.

Objected to because hear say.

Wm. A. Orr.

Q.35-State when you and Collier first learned that it was not recorded when first taken to the Clerk's office, and whether or not you and he supposed that it had been recorded at said time?

A.35-I think it was in 1892 when I first learned it was not recorded. We supposed it was recorded up to that time. In having the titles looked up we found that it was not on record.

Q.36-Is the James P. Barron that you have spoken of as having gone West and learned definitely of his father's death the same James P. Barron who is one of the plaintiffs in this suit?

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A.36-He is.

Q.37-Please state when it was, as stated by James P. M Barron, that his father died?

Objected to because hearsay, irrelevant and immaterial.

Wm. A. Orr.

A.37-He stated to me that it was six or seven years ago. Some time before he went there, I don't remember.

Q.38-In the pleadings in this cause it is stated that W. N. G. Barron, Jr. never knew that his land had been sold, or that possession thereof had been given. Please state the facts in regard to this?

A.38-Well, I don't know that he ever knew, but I suppose he did because he had made a power of attorney to sell the land. I never saw any letters from him at that time.

Q.39-Do you or not know it to be a fact that J. K. P. Barron wrote or sent word to W. N. G. Barron, Jr. that he had sold said land and used the money as herein above stated by you?

A.39-Yes, sir, he did write to him.

Q.40-State where that letter is if you know?

A.40-I don't know.

Q.41-If that letter is in existence in whose possession would it be found?

A.41-I don't know who has got his papers.

Q.42-State whether or not it would be possible for you or James H. Collier to produce that letter, or the party who may have it?

A.42-I don't think we could produce it. I don't know where it is.

Q.43-Please state what is in that letter?

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~~Ax48x~~ Objected to because the letter is the highest evidence.

Wm. A. Orr.

A.43-He had writ to him that he had sold the land, and so soon as he seen what debts he ~~w~~ owed and fixed that up he would try and send him some money.

Q.44-It is stated in your cross-bill that W. N. G. Barron Jr., his widow and the complainants in this suit have long since known all the facts in connection with the sale of this land, and that no complaint has ever been made until a few weeks before the filing of this suit. Please state the facts as to this?

A.44-They never brought in any complaint at all until some time before,---five or six weeks--- the suit was brought. They knew the sale was made and got part of the money.

Q.45-Please state the age of Sallie J. Bailey, whether or not she is now married, ~~y~~ the age of James P. Barron as near as you can?

~~Ax45x~~ Objected to because the record of their ages, if any, is the highest evidence.

Wm. A. Orr.

A.45-I don't know what their age is, but they are over 21. James P. Barron I suppose is about 28 or 29, and Sallie Bailey I ^{recon} is about 25. R. P. Barron I think is about 23. Yes, sir, Sallie J. Bailey ^{has been} ~~xx~~ married ---I recon she ~~x~~ is married unless she has got a divorce.

Q.46-Is it not a fact that she has obtained a divorce, and if so, how long ago, or do you know?

A.46-I understood that she has got a divorce, but I don't know it to be so.

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CROSS EXAMINATION.

Q.1 -Did you see any money paid to W. N. G. Barron, Jr?

A.1 -No, sir, I did not.

Q. 2-Did you see N. G. Barron, Jr. sign any paper in question in this case?

A. 2-No, sir, I did not see him sign any paper. He was not in this country at that time.

Q. 3-The notes mentioned in your examination in chief, did you see them signed?

A. 3-No, sir, I did not see him sign them, but I saw his signature and they acknowledged them in the settlement.

Q. 4-Did W. N. G. Barron, Jr. acknowledge the signature to those papers in settlement of anything?

A. 4-No, sir, He was not here then.

Q. 5-Did you marry an heir of Aaron J. Collier?

A. 5-No, sir, I never.

Q. 6-Who did you marry?

A. 6-I married a Collier first --- I have been married twice.

Q. 7-What Collier first?

A. 7-Martin Collier's daughter.

Q. 8-What relationship was she to Aaron J. Collier, deceased?

A. 8-Well, some little distant relation. He had married her mother --- he was her step father.

Q. 9-Well, was not she an heir to his estate?

A. 9-No, sir.

Q.10-How was that?

A.10-Because the land come by him and did not by his wife

Q.11-Was you a creditor of W. N. G. Barroh, Jr.? Did he

-13-

owe you anything?

A.11-I had bought the interest of Sallie Collier, the widow of A. J. Collier, that is, I ~~was interested in~~ bought half interest in that with James H. Collier. I was guardian of the heirs of A. J. Collier. I had that interest in it.

Q.12-You was interested, then, as guardian for other people?

A.12-Yes, sir, and as owner of one half of the dowry.

Q.13-Where was you when W. N. G. Barron is purported to have signed the power of attorney filed in this case, or filed with your deposition?

A. 13-I was in Big Stone Gap, Virginia.

Q.14-How do you know you was in Big Stone Gap when he signed it?

A.14-According to the date of the power of attorney I was here then. I lived here.

Q.15-^{How} Do you know you lived here then? How do you know you was here?

A.i5-I know because I lived here.

Q.16-Do you stay at the place where you live every day?

A.16-No sir, not every day.

Q.17-How do you know you was here on that particular day?

A.17-Well, I don't know exactly, but I was running a mill over here at that time and was hardly ever absent.

Q.18-Did you see W. N. G. Barron^{jr.} on that day, sir?

A.18-Of course I did not, because he was not in this country.

Q.19-In your examination in chief you state that J. K. P. Barron could not have gotten a greater price for the land ~~and~~

-14-

sold to you, I believe. Is that so? Did you make such a statement?

A.19-I think something to that amount, that he could not have gotten a better price than we paid him for it.

Q.20-Do you know that he tried to get a better price?

A.20-He tried to get the old man Barron, W. N. G. Barron, Sr. to buy the land, and the old man said that he could not give that price for it; that if Gilly and Collier wanted it at that price to let them have it.

Q.21-I believe you state that W. N. G. Barron, Sr. was at that time a creditor of W. N. G. Barron, Jr. Is that so?

A.21-Yes. He had an attachment for about \$1100.00 against him at that time. He had helped pay for some of this land, I think, out of that.

Q.22-How do you know that it was the fault of the Clerk of Lee County in the matter of recording the power of attorney in question?

A.22-Because I was there when Mr. Barron delivered the power of attorney to him and ordered him to put it upon record, and we never knew any better until this thing come up, we found on examining the title, but what it was upon record.

Q.23-Who was Clerk then of the County Court of Lee County?

A.23-I dis-remember, but I think it was Mr. Westley Orr; The man with one arm---I think he was clerk but I won't be certain.

Q.24-Which offered the power of attorney for record? You or Mr. J. K. P. Barron?

A.24-Mr. J. K. P. Barron.

Q.25-To whom was it handed ~~and~~ or delivered?

A.25-It was handed to the Clerk.

Q.26-Who was the Clerk?

-15-

Q.26-Who was the Clerk?

A.26-I think Mr. W. Orr was as well as I recollect.

Q.27-Who paid the fees for the recordation of the power of attorney? Any body?

A.27-I don't know whether any body did at that time or not.

Q.28-Then you did not see any money paid for the recordation, or tax?

A.28-I don't remember that I did?

Q.29-Do you remember the date when it was ~~recorded~~ delivered to the Clerk of Lee County for record?

A.29-No, sir. I think it was some time about the time that they had the deed recorded --- some few days, may be, afterwards. I went down with Mr. Barron --- we went down to have both deed and power of attorney put upon record.

Q.30-Do you know that W. N. G. Barron, Jr. got one cent of the money or consideration that you was to pay for the land in question?

A.30-I know that he got it paid on his debts.

How
Q.31-Do you know that they were his debts?

Wkkk A.31-Well, because they was notes that he owed. He was administrator of the estate of A. J. Collier and these debts were all charged to him by the commissioner. The commissioner also got judgment against him for these debts. Most of them were all judgments.

Q.32-Where are those judgments?

A.32-I suppose they were in the Clerk's office at that time.

Q.33-What Clerk's office?

A.33-Jonesville.

Q.34-And is who - 2

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Q.34-And in whose favor?

A.34-Well, some of them were in favor of W. N. G. Barron, Sr., and some of them in favor of Pridemore, and some of them in favor of A. Collier's estate --- the infant heirs of A. Collier and the widow of A. Collier, deceased, and probably some others, I don't remember now. I know they are all settled.

Q.35-Is it judgments you refer to, then, in the shape of evidences of debt, or was it notes?

A.35-Judgements and attachments. Probably some of them were notes given and judgment on them. Some of them were attachments and some of them were judgments.

Q.36-How much money was paid on any judgment at all that you know anything about?

-17-

A.36-Seven or eight hundred dollars was paid to the Collier estate that was coming to the Collier heirs. The attachment of W. N. G. Barron, Sr. was settled by another debt due W. N. G. Barron, Jr. The other was a judgment settled for Pridemore by J. K. P. Barron as power of attorney, and some other judgments, I don't remember; but \$240.00 was paid to Eliza Barron.

Q.37-Did you see it paid to Eliza J. Barron?

A.37-I don't remember whether I was present or not. I know I heard her and J. K. P. Barron both say that she had got it,---J. K. P. Said he had paid it ---I don't remember that I was by when it was paid, but I heard them both remark that it was paid.

Q.38-Did you state in your examination in chief that that land adjoining you has been sold for any price at all, and if so at what price?

A.38-It was sold in 1893 for about \$15.00 an acre, or there about. May be a little less, but there somewhere.

Q.39-To whom was that land sold?

A.39-It was sold to J. K. P. Barron and J. C. Flanary brothers by Hugh Barron.

Q.40-Have you ever dealt very much in real estate in this country?

A.40-Yes, sir, a good deal.

Q.41-Will land bring as much on a forced sale as it will otherwise?

A.41-Well, sir, I don't know that it would. It is owing to how it is bought. It might not at an auction sale. This land was not sold at auction.

Q.42-Well, if land ^{is} liable to be forced to a sale, will it bring as much as it would at an auction sale?

-18-

bring as much as otherwise?

A. 42-It sometimes don't. This land brought as much money as he gave for it and a little more.

And further the deponent sayeth not.

John Gilley

Enos Hyatt, another witness of lawful age, first being sworn, deposes as follows:

Q. 1 -State your name, age, residence and occupation?

A. 1-Enos ^{K.} Hyatt--- 51 years old ---my occupation is farming ---Live in Wise County, Virginia.

Preliminary examination by counsel for defendants.

Q. 1-Have you had anything to do as agent of J. K. P. Barron, or at the request of J. K. P. Barron, in the matters in ~~question~~ controversy in this cause?

A. 1-I have not.

Q. 2-Has J. K. P. Barron asked you in any way to aid him in the transaction of the matters in controversy in this cause

A. 2-He has not.

Q. 3-Are you related to W. N. G. Barron, Jr. in any way?

A. 3-A little related by marriage --- distant relations.

Q. 4-How related?

A. 4-I don't know exactly how close it is --- some third cousins probably, by marriage. I mean my wife is third cousin in.

Direct examination continued.

Q. 2-Please state whether or not you are familiar with

-19-

~~the~~ writing of W. N. G. Barron, Jr., and if so state how you acquired such familiarity.

Objected to because the statutes of limitation bars the action on this contract in the cross suit.

Wm. A. Orr.

A. 2-I am familiar with his hand writing. We attended the same school together, were raised up together, and learned to write under the same master together, and I have been familiar with him up to the time that he left here. I have notes made by him in my possession.

Q. 3-State whether or not you have seen signatures that you know were made by him, and if so whether many or few?

A. 3-Well, I don't know at the present time only the one I have in possession, and this here power of attorney. I looked at that and to the best of my knowledge that is his signature.

Q. 4-I now show you the power of attorney filed with John Gilly's deposition, and ask you to state whether or not the signature thereto is the true and genuine signature of W. N. G. Barron, Jr.?

A. 4-It is to the best of my knowledge.

Q. 5-What did J. K. P. Barron do with the money ~~derived~~ derived from the sale of the land in dispute to Gilly and Collier, so far as you know?

A. 5-Well, I don't know anything about what he did with any of the money outside of the attachment that Wm. N. G. Barron, Sr. held against W. N. G. Barron, Jr. I heard it was settled out of the funds derived from said sale.

Answer objected to because hear say.

Wm. A. Orr.

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Q. 5-Do you, or do you not, know it to be a fact that that said attachment was released just about the time that the deed was made by J. K. P. Barron, as attorney, and also whether or not you know that other creditors of W. N. G. Barron, Jr. discontinued any intention or attempts to subject his land to their claims?

Objected to because the matters of attachments are matters of record, and the highest evidence.

Wm. A. Orr.

A. 5-Well, as to W. N. G. Barron, Sr.'s, attachment, I just know what he said about it, and as to the Gilly and Collier debts they had against him as guardian of the estate, I know they were satisfied. I know they were satisfied ~~to~~ my own *knowledge*.

Q. 6-State what James P. Barron said as to the time, and where-bouts of his father's death.

Question objected to because hear say.

Wm. A. Orr.

A. 6-He said when he came back from Missouri that he got there about two weeks after his father's death, and that he fetched back his trunk.

Q. 7-Now state when it was that J. P. Barron was in Missouri?

A. 7-To the best of my knowledge it was six years last spring --- seven years this coming spring.

Q. 8-State whether or not you are familiar with the land in controversy, and also, whether or not you know anything of its value at the time it was sold to Gilly and Collier?

A. 8-I am familiar with it at that time and since.

Q. 9-Please state what was, at the time of said sale, a

-21-

fair price for said land?

A. 9-I think that \$15.00, was a fair cash value for it at that time.

Q.10-State whether or not, so far as you know, J. K. P. Barron made any effort to find other purchasers for said land?

A.10-He offered to sell the said land to his father at the same time, or near about the same time, that he sold it to Collier and Gilly.

Q.11-Why did he not sell to old man Barron?

A.11-The old gentleman said it was better to sell to the Collier heirs or to Gilly and Collier; that he did not think it was worth that much money.

Q.12-State what has been the effect on the value of said land of the labor and improvements of Gilly and Collier, if any?

A.12-The land at the time that Collier and Gilly bought it had been run in corn ~~fixes~~ considerable and was washed considerable, and since Gilly and Collier have purchased it they have put it in grass mostly, put up fences, and had considerable improvements in reference to clearing up. I would think it would increase its value.

Q.13-What is its present value in your judgment?

A.13-Well, I would suppose it was worth \$20. per acre. And further this deponent sayeth not.

James H. Collier

James H. Collier, another witness of lawful age, having been first duly sworn, deposes as follows:

Q. 1-State your name, age, residence and occupation?

A. 1-My name is James H. Collier, age 38, occupation is

-22-

farming, and place of residence is Lee County.

Q. 2-Please state whether or not you are the same James H. Collier who is one of the defendants and cross complainants in this suit?

A. 2-Yes, sir, I am the man.

The deposition of this witness is objected to because a party to the original contract, and because J. K. P. Barron is not the agent of W. N. G. Barron, Jr., and because interested in the result of this case, and because W. N. G. Barron, Jr. is dead.

Wm. A. Orr.

Q. 3-State whether or not J. K. P. Barron is dead or alive?

A. 3-He is alive.

Q. 4-Please state with whom you and John Gilly had the transaction of the purchasing of the land in dispute?

A. 4-J. K. P. Barron.

Q. 5-Did you understand him to be acting for ~~W. N. G. Barron~~ ~~xxxxxxx~~ ~~xxxxx~~ ~~Barron~~, ~~xxx~~ himself or for some other person?

A. 5-He was acting for W. N. G. Barron, Jr.

Q. 6-What authority, if any, did he have for representing W. N. G. Barron, Jr.?

A. 6-Well, by his power of attorney.

Objected to because written evidence of power of attorney is the only evidence, and the highest evidence there can be in a case of this kind.

Wm. A. Orr.

Q. 7-State whether or not the power of attorney filed with John Gilly's deposition in this case is the one which you have reference to?

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A. 7-Yes, sir. It is the same paper.

Q. 8-Please state the value of the land in dispute at the time you and Gilly bought it, and also whether the value has since then been increased or decreased, and why?

A. 8-Well, sir, I thought ten or twelve dollars per acre was a big price for it when we bought it. The value has increased since then by fencing, sowing grass, and building a good house on it.

Q. 9-About how many acres were there in the tract that you and Gilly bought?

A. 9-We supposed there was about 140 acres. There ~~might~~ have been a little more.

Q.10-State whether or not J. K. P. Barron made any effort to find other purchasers for said land?

A.10-Well, he tried to sell it to his father, and then he went to Jonesville and tried to sell it to any body he could find. We did not much want to take it in the start, and he said he could not sell it; that he wanted to satisfy debts he owed to A. J. Collier's widow and heirs. We told him it was too much and his father said the same.

Q.11-What use did J. K. P. Barron make of the money you and Gilly paid him for said land.

A.11-Well, ~~he paid~~ W. N. G. ~~Barron~~ Jr. he paid the debts of W. N. G. Barron, Jr. with it. I am not certain, but I think it was \$750.00 he paid to me and Gilly as guardians for the Collier heirs. He just paid it over to us to settle that part that was against W. N. G. Barron, Jr.

-24-

J. K. P. Barron said he paid Louisa J. Barron and her heirs \$240.00--- they both said so.

Q.12-Do you know anything of other claims or judgments or attachments then in existence, or threatened against W. N. G. Barron, Jr.'s estate, and if so what became of them.

Objected to because hear say.

Wm. A. Orr.

A.12-Well, W. N. G. Barron, Sr. had a claim for \$1100. I don't know now that they did, ~~except~~ but W. N. G. Barron, Sr. and J. K. P. Barron both said there was others. They said Gen. Pridemore had a judgment, and some others, I don't exactly remember what. Pridemore's claim was two or three hundred dollars. J. K. P. Barron settled it he said.

Answer objected to because hear say.

Wm. A. Orr.

Q.13-When did W. N. G. Barron, Jr. die?

A.13-Well, J. K. P. Barrom and Jim, his son, told me that he died six years ago last spring.

Answer objected to because hear say.

Wm. A. Orr.

Q.14-When did the widow and heirs of W. N. G. Barron, Jr. first know of this transaction?

A.14-Well, the widow was right there when the deed was made and signed it.

Q.15-When did the children learn of it?

A.15-They knew of it at that time.

Q.16-Please state how the widow and heirs looked on said ~~contract~~ transaction at the time it was made and since then up until a few months ago?

~~At~~ Objected to because the said heirs were infants ~~at~~

-25-

at the time.

Wm. A. Orr.

A.16-I never heard any objection until this kick come up about this land. That was about, I re^kcon, last fall. That was the first I heard any talk about it.

Q.17-State whether or not W. N. G. Barron, Jr. was informed of the facts about the sale of this land prior to his death?

A.17-J. K. P. Barron, told me he wrote to him about it. Objected to because hear say.

Wm. A. Orr.

Q.18-You state that Eliza J. Barron, the widow of W. N. G. Barron, Jr. signed the deed made to you. Please state first whether or not she was the same person that was styled in another suit pending against you and John Gilly as Louisa J. Barron, and also please state what, if anything, was said about her reason for signing said deed made by J. K. P. Barron attorney in fact, and herself?

A.18-Yes, sir, she ^{was} ~~xx~~ the same as Louisa J. Barron. She said she was willing to sign it or do anything to settle W. N. G. Barron, Jr.'s debts.

Objected to because what Louisa J. Barron, the wife of W. N. G. Barron, Jr. said at the time is not legal and cannot prejudice W. N. G. Barron, Jr. and his heirs, he W. N. G. Barron, Jr. not being present.

Wm. A. Orr.

Q.19-Please state the general character of J. K. P. Barron?

A.19-He is a square man, and I never heard any one ~~say~~ say anything to the contrary.

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Q.20-It is stated in the bill in this case that the said J. K. P. Barron conspired to defraud the said W. N. G. Barron, Jr., and that you and Gilly conspired and colluded with him with this intent and purpose. Please state the facts about this?

A.20-No, sir, there was nothing in that.

CROSS EXAMINATION.

Q. 1-Is it not a fact that you wanted your money out of W. N. G. Barron, Jr.?

A. 1-Why of course we wanted our money.

Q. 2-Did you not want to drive as good a bargain as you could? Is that not natural with men?

A. 2-No, sir, there was no drive in ~~xx~~ it. We told J. K. P. Barron to sell it for more money if he could and pay us the money.

Q/ 3-It is a fact though, that there was money owing to you as guardian and heirs?

A. 3-Yes, sir.

Q. 4-Do you state in substance in your examination in chief that J. K. P. Barron paid the widow, Eliza J. Barron, a sum of money?

A. 4-Yes, sir.

Q. 5-Do you know why he paid her that sum of money?

A. 5-No, sir.

Q. 6-Was she then the wife of W. N. G. Barron, Jr., or do you know?

A. 6-Yes, sir, I re^kcon she was.

Q. 7-Do you know whether or not Eliza J. Barron, the lady mentioned in the deed to you together with J. K. P. Barron,

-27-

has ever been divorced from W. N. G. Barron, Jr.?

A. 7-No, sir, not that I know of. I never ~~hard~~ any talk of it.

Q. 8-Has Eliza J. Barron ever claimed that she was divorced?

A. 8-No, sir.

RE-DIRECT EXAMINATION.

Q. 1-What was the reason for the payment of the money to Eliza J. Barron?

A. 1-For the benefit of her and her heirs.

You Q. 2-Do you know of anything relating to the case that ~~we~~ have not talked of?

A. 2-No, sir.

RE- CROSS EXAMINATION.

Q. 1-Was Eliza J. Barron at the timethat you traded with J. K. P. Barron administratrix of the estate of W. N. G. Barron, Jr.?

A. 1-Not that I know of, sir. They did not have any administrator that I know of. They might have had for all I know.

Q. 3-Well, how is it then, that J. K. P. Barron, according to your understanding, and by what authority did he pay to her the sum of money that you say was for the benefit of her and her heirs?

A. 3-I suppose because he was the power of attorney. And further this deponent sayeth not.

Witness.

John B. Payne

his
James H. Collier,
mark

Virginia, Wise County, to-wit:

I John B. Payne, a Notary Public in and for the County of Wise and State of Virginia, do hereby certify that the foregoing depositions of John Gilly, James H. Collier and Enos Hyatt were duly taken, sworn to and subscribed before me at the time and place, and for the purposes set forth in the caption.

Given under my hand this 22nd day of January, 1894.

John B. Payne
Notary Public for Wise County, Va.

J. P. Barron et al
Depositions
for
Defts &
Cross-Complainants

John Gilly et al

Notary fees \$1.50
Paid by John Gilly
for Mr. B. Barron
J. P.

Received February 2nd 1894
By mail in good condition
and Filed Feby 2nd 1894
A. B. Munsey clerk

The Depositions of John Gilly, Enos Hyatt
and James H. Collier are further
accepted to so far as they tend to
prove the signature of Wm. H. Barron
Jr. Their witnesses having chiefly based
their opinion on a signature to notes
which they did not see signed & which
were never acknowledged or paid by
said Barron. Feby 3rd 1894.
(Exception No. 1)
Wm. A. Orr
M. G. Ely

And further, the deponent saith not.
V. 3-I suppose because he was the power of attorney.
her and her heirs?
to her the sum of money that you say was for the benefit of
going to your understanding, and by what authority did he pay
I know.
O. 3-Well, how is it then, that J. K. P. Barron, second-
administrator, that I know of, they might have had for all
A. I don't know of, sir. They did not have any
J. K. P. Barron administrator of the estate of W. H. G. Barron
O. I was told J. Barron of the times that you passed with
him, is it?

The depositions of Enos Hyatt, John Gilly and James H. Collier
are further accepted to in so far as they tend to
prove the signature of Wm. H. Barron, Jr. to a paper
called a Power of Attorney on account of Section
3344. And the said Power of Attorney is accepted to
because the same is a foreign paper & is not
properly authenticated for record as is
required by said Section 3344-Therefore submitted
Feby 3rd 1894.

Wm. A. Orr
M. G. Ely

(Exception No. 2)

J. P. Barron et al Complots
vs }

John Gilly et al Defts
and

John Gilly et al Cross-Complots
vs }

J. P. Barron et al Cross-Defts

Report of Commissioner
To Hon W. P. Miller, Judge of Lee
Circuit Court:

The undersigned, special
Commissioner in the above suit
and cross-suit, respectfully
reports that none of the com-
plainants has so far conveyed
to Gilly & Collier the land they
were directed to convey, and
as the time has elapsed within ^{which} such
deed should have been made, your
Commissioner has executed to John
Gilly & Jas. H. Collier a deed of special
warranty for in the names of
all the complainants, including
the infant complainant, conveying
the land which your Commissioner
was ordered to convey; and herewith
files the same for the inspection of the Court.
Respectfully submitted this Nov 14. 1894
H McDowell, Jr, Special Com'r.

~~John Gilly~~

v. J. P. Barron et al

no } Report

Jno. Gilly et al

Filed this the 14th day
of November 1894


A. B. Munsey
Entered in Clerk

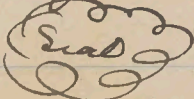
Chancery Order
Book & Page
no 84

This deed made the 27, day of January
in the year 1876, between Jas. K. P. Barron
Attorney in fact for William N. G. Barron
Jr and Eliza his wife of Lee County
Virginia of the one part and John Gilly
of the County of Wisc and State aforesaid
and James H. Collier of the County of Lee
and State aforesaid of the other part;
Witnesseth; that for and in consideration
of the sum of one thousand and
five hundred dollars in hand paid
and secured to be paid the receipt
whereof is hereby acknowledged, the
said James K. P. Barron as Attorney in
fact as aforesaid and Eliza Barron
wife of the said William N. G. Barron Jr, doth
grant bargain and sell unto the said
John Gilly and James H. Collier a certain
tract or parcels of land lying and being
in the said County of Lee, in the Turkey
Cove, being the same land purchased by
the said William N. G. Barron, Jr, from
the heirs of Aaron J. Collier, deed, and
which land has been laid off and
assigned to the said William N. G.
Barron, Jr. by Commissioners appointed
for that purpose, embracing all the
land as purchased by the said

William N. H. Barron from said heirs
in the lands of the said Aaron J.
Leellier, deceased including all the
interest in the down lands of Sarah
Leellier widow of the said Aaron J. Leellier
deceased. Subject however to the down
rights of said widow. And the said
James H. P. Barron as Attorney in fact -
as aforesaid covenants with the said
John Gilley and James H. Leellier, that he
will warrant generally as Attorney
aforesaid the land hereby conveyed.

The vendors lien is retained on
said land till the purchase money
is fully paid & discharged. Witnesses
the following signatures and seals

J. H. P. Barron 
attorney in fact for William N. H. Barron Jr

Eliza J. Barron 

County of Lin State of Virginia to wit: -

I Learr Bailey a Notary Public for the County
aforesaid in the State of Virginia, do certify
that James H. P. Barron Attorney in fact for Willi-
am N. H. Barron Jr whose name is signed to
the writing hereto annexed bearing date of
the 27th day of January 1876 has acknow-
ledged the same before me in my County
aforesaid. Given under my hand

This January 27, 1876.

Carr Bailey N. P.

State of Virginia County of Lee to wit:

I, Carr Bailey a Notary Public for the County
aforesaid in the State of Virginia do certify
that Eliza J. Barron wife of William N. J. Barron
Jr. whose names are signed to the writing
hereto annexed bearing date on the 27
day of January 1876 personally appeared
before me in the County aforesaid and
being examined by me privily and
apart from her husband and having the
writing aforesaid fully explained to her
she the said Eliza J. Barron acknowledged
the said writing to be her act and deed
and that she had willingly executed the
same and does not wish to retract it.
Given under my hand this January
27, 1876.

Carr Bailey N. P.

Virginia Lee County Court Clerks Office the 1st
day of Decr, 1876.

The foregoing and from J. N. P. Barron Attorney
in fact for William N. J. Barron Jr. & Eliza
J. Barron of Lee County, Virginia, of the one
part and John Kelly of the County of Wise and
State aforesaid and James H. Hallier of Lee
County, Virginia, of the other part, was this
day admitted to record upon the

Certificate of Carr Bailey a Notary Public
in and for the County and State of Maryland
Testy— R. M. Orr, Jr. D. C.
A Copy. Teste S. W. Richmond Clerk

John Kelly et al
vs
Leopold - and
Eliza J. Barron et al

"R"

for copy 90-4

State of Texas
County of Grayson I know all men
by these presents
that I W. A. G. Barron, Jr. of the State and
County aforesaid do by these presents
appoint and confirm J. K. P. Barron of
the State of Virginia County of Lee ~~my~~
my Attorney in fact for me and in
my name to transfer sell or dispose
of any and all lands to me belonging
and in my name and for me to make
and sign any and all Conveyances
necessary to be done by me to perfect
titles to any and all parties that may
purchase lands or tenements to me be-
longing or any goods or chattels
that may be necessary to be sold in
which I may have an interest to
give and take receipts in my name
and to do any ~~and~~ all business
necessary to be done by me And I
W. A. G. Barron by these presents hereby
appoint constitute and confirm the
said J. K. P. Barron my sole

Agent and Attorney in fact to do and perform any and all of the foregoing provisions of this power of Attorney.

Given under my hand and seal using scroll for seal this the 12 day of February A.D. 1875

Wm. N. G. Barrow Jr

State of Texas }
County of Grayson }

Before me J. V. Lockrell, Justice of the Peace and ex-officio Notary Public

for Grayson County, personally appeared,

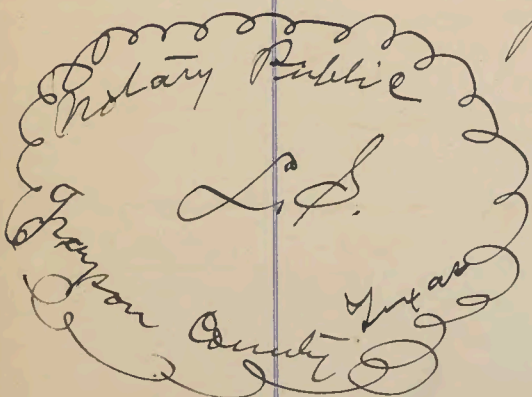
...
I am not
certify date,
nor that it
was done
in State
or County

W. N. G. Barrow, Jr to me made known by M. M. Templeton and acknowledged he signed and delivered the foregoing Power of Attorney for the consideration therein stated.

Given under my hand and official seal, on this the 12 day Feb A.D. 1875

J. V. Lockrell

Justice of the Peace and ex-officio Notary Public



Virginia Lee County to-wit:

In the office of the Clerk of ^{the} said
County the 15th day of August 1892
this Power of Attorney was presented
and admitted to record.

Teste John R. Gibson Clerk.
A Copy. Teste S. T. Richardson Clerk.

W. A. G. Barrow, Jr.,

To } Power of Atty (copy)

J. E. P. Barrow

"B"

c 75 cts

Recd "77 Dec 21 1877
24 98

This Deed made this 2nd day of Sept; 1893, by
and between Louisa J. Barron widow of W. N. G.
Barron, Jr., deceased, party of the first part; and
John Kelly and James H. Collier, both of Lee Co., Va.
parties of the second part; Witnesseth: ~~that~~
whereas by a certain deed dated January 27th
1876, from W. N. G. Barron, Jr., by J. R. P. Barron
his Attorney in fact the aforesaid party of the
first part who signed said deed by the name
of Eliza J. Barron, attempted to convey to the par-
ties of the second part her dower interest in the
land therein described; and whereas the
Power of Attorney under which the said J. R.
P. Barron ~~acted~~ executed said deed for
W. N. G. Barron, Jr., was defective; and where-
as it is believed by the parties hereto that
because of said defective power of Attor-
ney the aforesaid deed probably did not
pass a dower right of the said party
of the first part to said parties of the second
part;

Now, Therefore, in order to cure all
defects and to pass to said second
parties all the right-title and interest
of said first party in the land hereinafter
described for and in consideration of
the sum of \$200⁰⁰ of which one half
has been paid in cash before the

execution and delivery of this deed,
the receipt of which is hereby acknowledged
and the balance of which is to be paid
in one year from this date, said de-
fined installments of purchase money
being evidenced by the promissory note of
the said parties of the second part to
the first party has sold and ~~by~~
hereby grants and releases with
special warranty, unto said second
parties all his rights, title and interest
in and to all of said land or lands
conveyed or intended to be conveyed
in the above mentioned deed of
January 24th, 1876 from W. M. G.
Barrow, Jr., et al to John Gilly
and James H. Collier which is of
record in the Office of the Clerk of
Lee County Court in Book 17
page 567 to which reference is hereby
made. To have and to hold unto
said parties of the second part, their
heirs and assigns forever in fee
simple. Witness the following
signature and seal.

Louisa J. Barrow Seal
Dignity Wise Co. to wit: -
J. A. C. Berryman a Notary Public

in and for the State and County of on-
- said do hereby Certify that Louisa J.
Barrow, whose name is signed
to the foregoing deed, dated Sept-24th-
1893, has acknowledged the same
before me in my County of on said.
Given under my hand this the 24th
day of Sept: 1893.

J. C. Berryman
Notary Public for Wise County.
A copy.
Lester D. F. Richmond clerk

Louisa J. Barrow
To J. L. Lundy (Copy)
Jas. Kelly & J. H. Collins

"L"

7
65-9

State of Texas
County of Grayson }

Know all men by
These presents that

I, M. C. G. Borron of the
State and County above said do
by these presents appoint and
confirm J. R. P. Borron of
the State of Virginia County of
Lee my Attorney in fact for
me and in my name to transfer
sell or dispose of any and all
lands to me belonging and in
my name and for me to make
and sign any and all convey-
ances necessary to be done by me
to perfect titles to any and all
portions that may purchase lands
or tenements to me belonging
or any goods or chattels that
may be necessary to be sold in
which I have an interest to
give and take receipts in my
name and to do any all business
necessary to be done by me and I
M. C. G. Borron by these presents
hereby appoint constitute and confirm
the said J. R. P. Borron my sole
agent, ^{and attorney in fact} to do and perform any
and all of the foregoing provisions

State of Texas, }

County of Grayson.

Before me J. V. Cockrell, Justice of the Peace

and ex-officio Notary Public for Grayson County, personally appeared.....

~~W. C. G. Brown Jr.~~ W. C. G. Brown Jr.

made known to me ~~well~~ known, and acknowledged..... signed and delivered the foregoing ~~Deed~~, for the consideration and purposes therein stated.

Given Under my Hand and official seal, on this the..... day

Feb

A. D. 1879-

J. V. Cockrell

Justice of the Peace and ex-officio Notary Public.



The STATE OF TEXAS,
Grayson County.

} Know all Men by These Presents,

That *of the County*
of *and State of* *for and in consideration of the sum of*
.....
dollars to *in hand paid by*
of the County of *and State of* *the receipt of which is*
hereby acknowledged have bargained, granted, sold and released and by these
presents do bargain, grant, sell and release unto the said
..... *all the certain lot or parcel of land bounded and described*
as follows, to-wit: situated

of this power of attorney Given
under my hand and seal this the 12 day
of February AD 1875-

Wm N. G. Barron Jr

of the County

Know all Men by These Presents,

The STATE OF TEXAS,
Grayson County.

Virginia Lee County to wit:

On the office of the clerk of the said
county the 15th day of Aug 1872. This Power
of attorney was presented and admit-
ted to record.

John R. Gilson Clerk

W. N. G. Barron Jr

68.3 Power of Atty

A. B. P. Barron

Recorded in deed
Book 29 Pa 283.

Examined

@ 1.23 -

Aug 15th 1872

Pa 283 = 1876.

John Gilly and James H. Collier

vs.

James P. Barron et al.

))
) Cross Bill.L I S P E N D E N S .

In the Circuit Court for Lee County, Virginia, in Chancery.

The general object of this cross suit is to compel the conveyance by James P. Barron, R. P. Barron and Sallie A. Bailey, and by a commissioner for P. H. Barron, infant, of the legal title of certain lying in Lee County, Virginia, and being the same described in the deed from James P. Barron, attorney in fact for William N. G. Barron, Jr. et al to John Gilly and James H. Collier, dated January 27th, 1876, and recorded in ~~///~~ Deed Book, ~~17~~⁵⁶⁷ page [^] of the office of the Clerk of Lee County Court, to which reference is hereby made.

The estate of James P. Barron, P. H. Barron, R. P. Barron and Sallie A. Bailey, formerly Sallie A. Barron, is intended to be hereby affected.

Bullitt & McDowell.

P. Q.

John Silly and
James H. Collier,

vs. { Cross Bill.

James P. Barron et al

Res Pendens

Willie A. McDowell.

A. C.

to be hereby affected.

and Willie A. Barron, formerly Willie A. Barron, is intended

The estate of James P. Barron, S. H. Barron, S. P. Barron

has been referred to which reference is hereby made.

to the said book, page of the office of the Clerk of

and James H. Collier, dated January 2nd, 1890, and recorded

on the 10th of William H. G. Barron, Jr., et al vs John Silly

for the same described in the book from James P. Barron et al

land of the estate of James H. Collier, in the County of Virginia, and de-

ferred to a commission for J. H. Barron, infant, of the

James P. Barron, S. H. Barron and Willie A. Barron

of this case and to be entered the

of this case and to be entered the

for the County of Virginia, in the County.

James P. Barron et al.

James P. Barron et al.

James P. Barron et al.

James P. Barron et al.

Cross Bill.

John Gilly & Jas H. Collier
vs } Cross suit in chancery
Jas P. B. Barron et al

To The Clerk of Lee Circuit Court:-

John Gilly and James H. Collier against James P.
Barron, P. H. Barron ^{R. P. Barron} and Sallie A. Bailey, cross bill in equi-
ty. Record enclosed lis pendens forthwith; issue subpoena to
sheriff of Wise County returnable to second December rules,
1893, ^{with copies for all defendants} appoint B. H. Sewell guardian ad litem for P. H. Barron,
infant defendant. Find cross bill enclosed.

The papers in the ^ssuit belong with the papers in the
suit in chancery now pending, styled James P. Barron et al vs.
John Gilly et al.

Bullitt McDowell
P. L

James P. Barron et al
vs. } Memorandum,
- on Cross-bill.
John Gilly et al.

In the Court of the Circuit Court:-
John Gilly and James H. Goffin vs. James P. Barron et al.

Virginia: —

1 In the Circuit ^{Court} of Lee County.

2 At the March Term, 1894.

3 James P. Barrow et al. vs

4 John Gilly et al. J. Lee Chy.

5 Complainants' Brief.

6 This is a suit brought by the Heirs of Wm
7 N. G. Barrow, Jr vs John Gilly and James H.
8 Callier, and a cross-suit of said Defts
9 against said Complainants.

10 The primary object of the bill of the
11 Barrow Heirs vs John Gilly and James H. Callier
12 is to set aside a deed made by James K.
13 P. Barrow, as Attorney in Fact for Wm N.
14 G. Barrow, Jr, to John Gilly and James H.
15 Callier, dated January 27th 1876.

16 The object of the Cross-suit is to Compell
17 the Barrow Heirs to convey the land
18 described in the bill and pleadings to
19 John Gilly and James H. Callier.

20 The paper claimed as a Power of Attorney
21 by Defendants and Cross-Complainants
22 is not a sealed instrument. Therefore
23 the deed, above described, is null and
24 void. It will be seen that this is
25 admitted by the Answer and Cross-
26 bill. —

27 2~
28 The Cross-Complainants say that said
29 deed is the Control of Wm N. G. Barrow, Jr.
30 This the Cross-Defendants in their
31
32

1 assume deny. There is no evidence
 2 that J. K. P. Barrow was ever authorized
 3 to do anything for and in the name
 4 of Wm N. G. Barrow, Jr. The paper offered
 5 as evidence (the power of attorney) cannot
 6 be so admitted in this case. 1st.
 7 because it is not under seal; 2nd
 8 because it does not comply with
 9 Section 3344, Code 1887 — in this that
 10 it is not so authenticated as to make
 11 it admissible as evidence in Va.

12 The certificate of acknowledgment does not
 13 certify the date of the said instrument, nor
 14 that it was acknowledged in the State where the
 15 officer acted, nor that it was acknowledged
 16 in the County where the officer acted, nor
 17 that it was signed in the County, acknow-
 18 ledged or executed where the certifying
 19 officer acted. Each and all of which
 20 Sections 2499 + 2501 Code 1887 require
 21 before any Power of Atty or deed can be
 22 legally recorded. This being a Foreign
 23 paper it must conform to said requirements
 24 before it can be read as evidence. An
 25 exception to it as evidence + Sec. 3344
 26 Code 1887, before cited; 2 Minor p 961; 6 Ligh 528;
 27 1 Rand 456; 2 Ed. Barlow's Law Practice Vol. 1 Page 624; 75 Va 491.
 28 But oral testimony is
 29 offered to prove the signature of Wm N. G. Barrow,
 30 Jr to said power of Atty. In Supor of Kelly &
 31 Callio & Enos Hyatt and exceptions thereto.
 32 To allow this evidence, if it was other-
 wise admissible, would be to ignore

1 the express and positive statute on
2 the subject of admitting foreign Powers
3 of Attorney as evidence in this State,
4 the section heretofore cited, (3344).

5 There is therefore no contract of Wm N. G.
6 Barron, Jr with John Gilly and James H.
7 Callin that can bind the heirs of the
8 said Barron in this case. In any
9 event, they are bound by the Statute of Limitations
10 which has been pleaded.

11 3rd.

12 Gilly and Callin answer and charge that Wm
13 N. G. Barron^{sr} was not free from Laches in
14 his life. This is denied by plaintiff and
15 cross-defendants. For how could the
16 Statute of Limitation, even, run against
17 him unless he had had actual
18 Notice when the several evidences of
19 fraud are considered - and they are several,
20 to-wit: 1st. Failure to record the so
21 called Powers of Atty till the late day of
22 August the 15th 1892, 16 yrs. 6 mos & 18 ds after
23 the date of the State Claim of a Contract by virtue
24 of it. 2nd. Slowness to record said Con-
25 tract - being 10 mos & 4 ds. 3rd The undertaking
26 to make a deed, ~~not~~ having authority to do^{so}, and
27 the acceptance of such a deed by the
28 defendants & cross-complainants is high
29 evidence of fraud. 4th. Wm N. G. Barron,
30 Jr, was at the time, and remains to the day
31 of his death, a fugitive from justice, and
32 for that reason never had any communication

1 with his family — but in nomine can Wm
 2 U. G. Barrow Jr be deemed as bound by Statute,
 3 inasmuch as the said so called Power of
 4 Atty was not recorded till Aug 15th 1892,
 5 some years after his death, and for
 6 a most potent reason that it is not proved
 7 that there has been one Cent paid on
 8 said so called Contract — all payment
 9 of debts being unauthorized and illegal, and
 10 for a further reason that Wm U. G. Barrow, Jr was dead
 11 within 7 yrs from Dec. 1st 1876 and not heard from
 12 by his family and having been a citizen of Va.
 13 See 80 Va p 790; 1 Wash. 145; 29 A. 760; 4 Munf.
 14 332-43. Acts of Assembly 1889-90, page 193.

4-

15
 16 No one can pay the debts of another and
 17 charge him therefor without his request.
 18 There is no such request proved. Thus
 19 the alleged Contract is without Considera-
 20 tion, is consequently a nudum pactum
 21 — and is ipso facto void.

5-

23 The payment of the purchase money was not
 24 made in the lifetime of the principle —
 25 nor was any suit for specific per-
 26 formance instituted in the lifetime
 27 of the principle. For these reasons on
 28 for this reason, the plaintiffs can
 29 not be forced in and by a Court
 30 of equity to convey. See Bishop on
 31 Contracts, & Cases cited, Sec 1853-2.
 32 (It will be observed that there is no evidence of

1 payment by any competent witness - specially,
 2 there is no legal payment of one Cent
 3 proved to have been paid to Wm N. G.
 4 Barrow, or to any one Authorized to
 5 receive the same. It is exceedingly
 6 strange that we have not been shown
 7 the receipt, even, of J. R. P. Barrow, the
 8 so called Attorney in fact. He could
 9 have receipted after institution of this suit.

5~

10
 11 Wm N. G. Barrow, Jr, fled the Country, leaving
 12 his property in the hands of his wife and
 13 infant children, It is not shown
 14 that he was ever aware of their
 15 having been dispossessed. It is
 16 shown that his family was threat-
 17 ened with suits against him -
 18 Yea, it is proved by their own
 19 depositions and by their own
 20 mouths that the father - what a
 21 wonder! had actually sued
 22 and attached his land. No
 23 wonder the distressed wife surren-
 24 dered possession. The father in
 25 Law having said, she might
 26 well expect that the rest of man-
 27 kind would at once become
 28 her common enemy. Fraud
 29 is clearly stamped on the entire
 30 transaction.

6~

31
 32 We think that the face of the Power here

1 offered by Cross-Complainants does not
2 authorize the payment of debts - certainly
3 it could not be construed to au-
4 thorize the settlement of fiduciary
5 accounts and ~~attaches~~ to any
6 unsettled matter, such as settling
7 accounts as Admin & Executor, & to
8 compromise & settle any suit or
9 suits. Such matters are not named
10 therein. Then the payment to the
11 Collin Heirs is no payment - and
12 the settlement of an Attached suit
13 with the father is no settlement
14 and payment - And it is here
15 laid down as a principle of law
16 that the purchaser, especially when he
17 takes no receipt, must see to the proper
18 application of the money in such
19 cases. See Minor, Vol 2 p. 237 & cases
20 cited.

7 -

21
22 He who would sue for specific execution
23 of a purchase of land alleged to have
24 been bought from an agent of the owner,
25 must show by evidence which is clear,
26 competent, direct, and satisfactory, both
27 the terms of the contract and the author-
28 ^{whether the} ity of the Agent, ^{or from him to sell or to convey, or both,} or a ratification by
29 the principle. Nothing of the kind is
30 shown by Cross-Complainants in this
31 case. See 88 Va 411; 86 Va 527;

1 These Cross-Complainants who ask specific
2 performance, say in their own depo-
3 sitions that they saw the so called Power
4 of Attorney at the time they claim to have
5 entered into the alleged contract. There
6 is a conclusive presumption of law that
7 they knew it to be a void paper and
8 that the Agent also knew it to be
9 void, and that they colluded with
10 the Agent to cheat these Complainants
11 and Cross-Defendants out of this land.
12 And this is a presumption of law
13 that they must rebut by competent evidence,
14 stronger evidence than their own
15 incompetent mouths.

16 "The Power of Attorney not
17 being evidence, there is no Agent;
18 there being no Agent, there is no
19 contract; and, there being no Agent,
20 John Gilly and James H. Callio are neither
21 competent witnesses, Wm. A. Barrow, Jr., being
22 dead. The inevitable conclusion is that
23 the Defts & Cross-Plffs have no case;
24 that the deed be declared null; that
25 there is no contract that can be
26 enforced; and that a writ of possession
27 be awarded the Plffs & Cross-Defts
28 for the land in controversy.

29 Wm. A. Orr, Atty
30 M. H. Ely
31 } Next page for reply to Defts'
32 Brief.

~~J. R. Baron et al.
vs. J. B. (H. A. Orr)~~

~~John Gilly et al.~~

~~Rich. L. 1894.~~

In Chancery, Circuit Court Lee County, Va

J. P. Barrow et al

vs
John Hilly & J. H. Callie } Brief in reply to
Dyke's Brief

1. The Power of Atty is fatally defective as evidence because the Certifying Officer did not certify the date of the instrument, and because he did not certify that it was acknowledged in his County and State. Then it follows that Wm. H. Barrow, Jr. has no Agent, and then the other fact follows that neither Hilly nor Callie are competent witnesses.

2. There is no constructive notice that W. H. Barrow, Jr. was bound by until the 15th day of August 1892, the day when the alleged Power of Atty was recorded.

There is no actual notice proved, even by an incompetent witness, and the depositions of Hilly & Callie being no evidence, there is no proof that a letter was written about the transaction.

Therefore the Statute of Limitation never began to run till Aug 15th 1892 ^{the day when the Power was recorded.} & the plaintiffs are not barred, but the Cross-Complainants are barred by limitation, the statute having begun to run against them on the 27th day of January, 1876. ^{355 = p. 10}

But to the Power of Atty again. It appears on its face

1 to be a Texas paper; that its date is
2 not-Certified; that its place of execution
3 is not-Certified; that ^{it} does not refer to
4 any thing to be done in Va or to any
5 property or person in Va

It is here stated as
7 a legal proposition that no Contract of and
8 Concerning real estate is valid when
9 made by an Atty in fact until he has
10 first recorded his authority. See Acts of
11 General Assembly, 1890 p 193, for 'analogous
12 reasoning - 80 Va p 809; 54. 117

13 In the opening Brief
14 1st Randolph is cited and Left
15 replies to it by saying that that de-
16 cision was rendered before a Notary
17 was authorized to certify a deed or
18 Return of Atty out of Va. Heant
19 that this is true - the facts that he
20 should certify are the same now
21 as before. There is nothing in
22 this point made by Lefts.

23
24 ~~John D. O'Neil~~
25 M. H. Ely } attys.
26
27
28
29
30
31
32

J. P. Barron et al
Brief
of
J. P. Barron et al

Geo. Gilley et al

Wm. A. Orr } Cellys.
M. H. Ely }

Jas P. Barron et al
vs }

John Gilly & J. H. Collier

Brief for Defts & Cross-Compl.

The bill in this case charges that Gilly & Collier acquired the 140 acres of land in dispute fraudulently, and prays that the deed to them be declared void, that they be required to account for rents and profits and for general relief.

Complainants introduce no testimony going to prove the alleged fraud. They have taken but one deposition: that of Judge Orr, who says in effect that he has no recollection of the fact stated by Jno. Gilly to the effect that the power of atty was left with him for record in 1876. This is rather immaterial in any aspect of the case; but as Gilly, an unimpeached witness for defendants, says positively that J. R. P. Barron did leave it for record at that time, and as Judge Orr alone denies it (or rather disavows any recollection of it) the plaintiffs have failed to sustain the burden of proof even on this minute point.

J. K. P. Barron is the only other person who could know the facts as to this matter and it is by reason of plaintiffs' failure to introduce any one of the plaintiffs as a witness that we have been deprived of the benefit of his testimony. This because, W. N. C. Barron Jr being dead and the fact in issue being a transaction between J. K. P. Barron & the dead man, we could not introduce J. K. P. unless some one of plaintiffs were first introduced.

It is too well established a doctrine to need citation of authorities that when fraud is alleged it must be clearly proved, and that the burden of proof is on the party alleging it. There is such an absolute and total failure of proof of the alleged fraud that it is needless to spend more time on that point. And not only is there a failure of proof of the fraud; but the papers filed and the testimony of ^{by defendants} ~~defendants~~ show unnecessarily but most abundantly that there was not a suspicion ~~even~~ or particle of fraud or of unfairness in the purchase made by the defendants.

No fraud having been proved

plaintiffs are barred by the statutes of limitation from bringing this action.

It is clear beyond reasonable doubt that Wm. G. Barron Jr directed and authorized the sale that was made and intended to authorize & empower his atty to make a valid conveyance; but even if this were not the case, Wm. G. B. in 1876 knew of the fact that the sale had been made, and he did not die until 1887. (Jno Kelly's dep. q 39 43, & ans 37; Collier's Dep q 17 & q 13; Hyatt's dep. q 7) The statement made by Jas. P. Barron that his father (Wm G B Jr) had been dead about two weeks 7 years ago this spring is admissible because Jas. P. Barron is a party plaintiff & is a declaration against his interest. J. K. P. Barron's statement that he wrote shortly after the sale to Wm G B Jr telling him that he had sold it & what he had done with the proceeds is admissible ^{on} ~~for~~ the same principle - J. K. P. being the agent of plaintiffs' ancestor. Moreover Kelly saw the letter, & testifies as to its contents (the original being lost or possibly in the possession of plffs.) and every presumption is in favor of the view that Wm G B Jr received the letter. Moreover the wife and children all knew

p 10 + 11

p 25 - 24

p 20

all the facts as to the sale, (and several of the latter were of age before the expiration of the ten years) and it is reasonable to suppose that they communicated these facts to the husband & father. And further, if J. R. P. Barron was directed to sell and remit to Wm Co as is testified, and if he had failed from 1875 to 1887 to report the facts to his principal, it is inconceivable that the latter should not have written either to his wife or children complaining.

If he did write to them the plaintiffs
are withholding testimony ^{presumably against their interest} ~~that reached~~
~~him by letter~~, if he did
not write the presumption is that the
letter Gilly saw reached him & satisfied
him.

Now for the brief for Plaintiffs.

It is not admitted that the deed filed is a nullity. This admission is that it is not a deed, because of lack of authority under seal for its execution; but it is contended that it is good as a contract to convey.

There is evidence in abundance that
J. K. P. B. was authorized to sell the

5-

land. The surrounding facts, even if the power of atty. had not been introduced, would prove this. ~~for~~ moreover the power is properly acknowledged for record (§2501 Code 1887 & corresponding section of Code 1873) unless because the notary fails to certify that he acted within his jurisdiction. There is no proof that he did not, and such being the case, it is a conclusive presumption of law that he, being a public officer, did act within his territorial jurisdiction. This being so the paper proves itself so far as its genuineness is concerned.

The case in
1 Randolph
was decided
before any statute
gave a notary
out of Va
power to
certify a
deed or
power of
Atty

Sec 3344 Code 1857, referred to by
Counsel for plaintiffs ~~has~~ ~~an~~ applies
~~in~~ here. It is that ~~every~~ "Every xx power
of atty. executed out of this state; the acknowl-
edgement xx of which is certified so that
it might be ~~recorded~~ admitted to record
under Chap. III [§2501] XXXX shall be
evidence in any court in this state."

The fact that the power is
not under seal is of course of no effect
as to its validity to authorize the agent
to sell.

That the date of the instrument
is not recited in the certificate is
entirely immaterial, because the original

is in evidence and the certificate is attached to it. And there is in the certificate abundant internal evidence that the instrument acknowledged is the power of atty on file.

If I am right in the above no parol evidence was needed as to the genuineness of the paper; but out of an abundance of caution I have proved, in the only proper manner, by ~~three~~^{two} witnesses acquainted with W. H. G. B's signature that the signature subscribed to the power is his signature. And stronger than any rule of law or evidence offered by defendants, is the amazing silence of the adult plaintiffs - children of the maker of the alleged forged paper who could so easily have proved it to be a forgery if it were such.

The charge that the defendants are barred by limitation I shall discuss later on.

3d

I have above given my reasons for contending that plaintiffs' ancestor knew of the sale in 1876. To contend that the non-recording of the power tends to show his want of knowledge, ^{our} or fraud,

7
in the face of the fact that the deed was recorded shortly after its execution, is to say the least decidedly weak. But the evidence stands balanced on the fact that it was left for record in the Clerk's Office in 1876. And it is proved that Silly & Collier always supposed it to be of record until 1892, and they then had it hunted up and recorded ~~at~~

It is admitted that W. N. & B. Jr was a fugitive; but there is not a word of evidence to support the statement of Counsel that he had no communication with his family. On the other hand it is proved that he was in communication with his brother J. R. P. Barron.

W. N. & B. Jr was not dead within 7 years from 1876. Even if there had been no communication from him during that period, the presumption of his death is overcome by the admission of Plaintiff Jas. P. Barron that he died in 1887.

4th

The fourth point raised by plaintiffs' Counsel is unworthy of reply. ~~The only evidence in this~~ But the power of attorney itself answers it, and moreover the only other

evidence in the case is that the atty came from out West at the request of Wm L B Jr to sell his land and settle his affairs. (Gilly's depts. 9/16 etc)

5th

The statement that the purchase price of the land was not paid during the life of the principal is, I submit, totally unwarranted by the evidence.

That this cross-suit ~~for~~ to compel the execution of a deed was not brought sooner is most satisfactorily explained by Gilly's & Collier's statements that they did not know of the defect in their title until a few weeks before this suit was brought.

As to the receipt. Could the defendants have wanted any other receipt ~~that~~ than that contained in the deed made to them? It acknowledged the receipt ^{of the purchase money} sufficiently. Besides all the witnesses prove the payment. And if plaintiffs ^{had} any doubt on this point why did they not introduce or at least make it possible for us to introduce the testimony of J. K. P. Barron.

9

6th

It is admitted that the power of attorney on its face does not direct the atty to pay the debts of the principal; but its evident intention is that that the atty shall pass a good title to the purchasers of the land & personal estate authorized to be sold. Hence, when it is in evidence that the principal was in debt, and that attachments had been or were about to be laid on the estate to be sold, the authority to discharge all debts necessary to clear the title is plainly implied. And the only testimony offered is that the atty was instructed and came to Virginia for the very purpose of settling the affairs of his principal.

To say that the defendants were required to see to the application of the purchase money is a grave misapprehension of the law. This doctrine does not apply except in the case of trusts; but even if we had a technical trust here, the authority cited by counsel for plaintiffs is all that is necessary to show the opposite of what they contend for. Where the debts to be paid are not scheduled the purchaser from a trustee is not

required to see to the application of the purchase money. 2 Minor's Insts p 236.
 of the

The last point (?) made by Counsel for plaintiff is so fully answered by the evidence in the cause that I shall not dwell on it.

The case on the Cross-Complaint.

The cross-complainants have been guilty of no laches. They discovered the defect in their legal title only a few weeks before the filing of their cross suit. Consequently a court of equity will not refuse the relief to which they are so clearly entitled.

The cross complainants testify that they did not know that the power was not sealed until ^{six weeks before the suit was begun.} ~~the summer of 1893.~~

And, all the parties being farmers, it would be rather surprising if, supposing that they had noticed the omission of the seal, they should have known of the doctrine of law that the authority to execute a sealed instrument must be under seal.

As it is fully proved that the agent was authorized to sell, that there was no fraud or mistake in the

sale; that the price realized was ^{adequate and} more
than any one else would give; that the purchase money has long since been paid;
that the contract was fair, equitable, certain
as to its subject matter, its stipulations, its
purposes and its parties; and the cross-
complainant being guilty of no loaches, the
Court will certainly grant the
relief prayed for — that the
cross-defendants be required to
convey the legal title.

W C McDowell, Jr
p. d.

Jas. P. Barron et al

vs

Brief

for

Defendants

John Gilley et al

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon

John Gilley and James H Collier

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said Court on the *Third* Monday in *October*, 189*3*, to answer a bill in Chancery,

exhibited against *them* in our said court by *James P Barron*
H. P Barron Infant who Sues by James P Barron
his brother and next friend and Sallie A
Bailey nee Sallie A Barron

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house,

the *2nd* day of *October* 189*3*, and in the 11 *8th* year of
the Commonwealth.

A B Munsey Clerk.

Circuit (E+O)

James P Barron ^{et als}

US. { SUBPÆNA
IN CHANCERY.

John Gilley et al

Orr & Ely p. q.

To 2nd October Rules,

Circuit Court.

Executed by Delivering
a true office copy
of the within
sums to John
Gilley & James
H. Collier at 6.
O'clock P.M. Oct the
14th 1848

L. M. Wade D.S.
for C. E. Flannery
S. L. Co.

Abatement Bar. L. P.

P 288. Rules
C 3258-9 (Dec)